TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1234.

THE COUNTY OF FRANKLIN, IN THE STATE OF ILLINOIS, PLAINTIFF IN ERROR,

vs.

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED JUNE 29, 1891.

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a UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the circuit court of the United States of America for the southern district of Illinois, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the southern district of Illinois, before you, between The German Savings Bank of Davenport, Iowa, plaintiff, and The County of Franklin, in the State of Illinois, defendant, a manifest error hath happened, to the great damage of the said defendant, The County of Franklin, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the eighteenth day of July next, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this nineteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the one hundred and fifteenth year.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES, *Clerk*.

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Walter Q. Gresham, judge of the seventh judicial circuit, on Wednesday, the fourth day of February, at the January term of said court, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the one hundred and fifteenth year.

JAMES T. JONES, *Clerk*.

GERMAN SAVINGS BANK OF DAVENPORT, IOWA, *v.* THE COUNTY OF FRANKLIN. } Assumpsit.

Be it remembered that heretofore, to wit, on the sixth day of September, in the year of our Lord one thousand eight hundred and ninety, came the plaintiff, a corporation organized and existing under the laws of State of Iowa, by Messrs. E. E. Cook and Brown, Wheeler and Brown, its attorneys, and filed in the office of the clerk of the circuit court of the United States for the southern district of

Illinois precipe for a summons and bonds for costs; which said precipe for summons and bond for costs are as follows, to wit:

In the Circuit Court of the United States, Southern District of Illinois, January Term, A. D. 1890.

2 THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA, *v.* THE COUNTY OF FRANKLIN. } Assumpsit. Damage, $10,000.

Will the clerk please issue summons in the above-styled cause, returnable to the January term, A. D. 1890. The action is assumpsit.

Damages, ten thousand dollars. Direct and deliver the writ to the marshal of this district to execute, and oblige—

E. E. COOK AND
BROWN, WHEELER & BROWN,
Att'ys for Pl'ff.

September 5, 1889.

(Indorsed:) Filed September 6, 1889. James T. Jones, clerk.

Circuit Court United States of America, Southern District of Illinois, January Term, A. D. 1890.

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA, *vs.* THE COUNTY OF FRANKLIN. } In Assumpsit.

We do hereby enter ourselves security for costs in this cause and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

3 Dated this 5th day of September, 1889.

BROWN, WHEELER & BROWN.

(Indorsed:) Filed September 6th, 1889. James T. Jones, clerk.

Afterwards, to wit, on said sixth day of September, of the year last aforesaid, a summons was issued in said suit directed and delivered to the marshal of said district to execute; which said summons, with return of marshal thereon, is as follows, to wit:

Circuit Court of the United States of America, Southern District of Illinois.

The United States of America to the marshal of the southern district of Illinois, Greeting:

We command you to summon the County of Franklin, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois on

the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January next, to answer unto the German Savings Bank of Davenport, Iowa, of a plea of assumpsit; and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this sixth day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fifteenth year.

[SEAL.]

4

JAMES T. JONES, *Clerk.*

I have duly served the within writ by delivering a true copy thereof to T. P. Harrison, clerk of the within-named county of Franklin, at Benton, Franklin county, Illinois, this 11th day of September, A. D. 1889.

C. P. HITCH,
U. S. Marshal,
By HIRAM LYCAN, *Deputy.*

(Indorsed:) Filed September 23d, A. D. 1889. James T. Jones, clerk.

Afterwards, to wit, on the sixteenth day of December, of the year last aforesaid, came again the plaintiff, by its said attorneys, and filed in the clerk's office of said court its declaration herein; which said declaration is as follows, to wit:

In the Circuit Court of the United States, Southern District of Illinois, January Term, A. D. 1890.

The German Savings Bank of Davenport, Iowa, a corporation organized and existing under the laws of the State of Iowa and a citizen of the State of Iowa, the plaintiff in this suit, by E. E. Cook and Brown, Wheeler & Brown, its attorneys, complains of The County of Franklin, a municipal corporation of the State of Illinois, and a citizen of the State of Illinois and of the district aforesaid, the defendant, of a plea of trespass on the case on promises.

5

For that whereas heretofore, to wit, on the 10th day of November, A. D. 1877, the said defendant, The County of Franklin, being thereunto duly authorized by an affirmative vote of the legal voters of said county, as required by law, had prior to the 2nd day of July, 1870, issued certain bonds to the Belleville & Eldorado Railroad Company in payment for its subscription to the capital stock of the said Belleville & Eldorado Railroad Company on its series of bonds, one hundred in number, numbered from one to one hundred, inclusive, for the sum of one thousand dollars each, payable to the said Belleville & Eldorado Railroad Company or bearer, payable twenty years after date or, at the option of said defendant, at any time after the expiration of five years and before maturity, with interest thereon from and after the 15th day of November, A. D. 1877, at the rate of eight per cent. per annum, said interest payable semi-annually, on the first days of January and July of each year,

on the presentation and surrender, at the place in the city of New York where the treasurer of the State of Illinois pays the interest and debt of said State, of the coupons attached to said bonds, of which the plaintiff avers there was one attached to each of said bonds for each semi-annual installment of interest as they should severally become due, and each of said coupons for the sum of forty (40) dollars; and the plaintiff further avers that the said defendant on the said 10th day of November, A. D. 1877, so issued as aforesaid bonds, amongst others, numbered, respectively, eleven, twelve, fourteen, thirty, thirty-three, thirty-four, thirty-five, thirty-nine, forty-seven, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-two, sixty-three, sixty-six, seventy-seven, eighty-three, and eighty-five, and delivered the same to the said Belleville & Eldorado Railroad Company; and afterwards, to wit, on the day and
6 year aforesaid, the plaintiff became the owner and bearer of the said bonds numbered as aforesaid, together with the several interest coupons thereto attached, and at the time this suit was commenced and still is the owner and bearer of the one hundred and twenty-eight interest coupons of the said bonds, overdue and payable at the commencement of this suit, as follows: One coupon from each of said bonds numbered, respectively, as follows: Eleven, twelve, fourteen, thirty, thirty-three, thirty-four, thirty-five, thirty-nine, forty-seven, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-two, sixty-three, sixty-six, seventy-seven, eighty-three, and eighty-five, each due July 1st, 1886, and each coupon numbered eighteen of the series; also one coupon from each of said bonds numbered, respectively, eleven, twelve, fourteen, thirty, thirty-three, thirty-four, thirty-five, thirty-nine, forty-seven, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-two, sixty-three, sixty-six, and seventy-seven, each due January 1st, 1887, and each coupon numbered nineteen in the series; also one coupon from each of said bonds numbered as last aforesaid, each due July 1st, 1887, and each coupon numbered twenty of the series; also one coupon from each of said bonds numbered as last aforesaid, each due January 1st, 1888, and each coupon numbered twenty-one of the series; also one coupon from each of said bonds numbered as last aforesaid, each due July 1st, 1888, and each coupon numbered twenty-two of the series; also one coupon from each of said bonds numbered as last aforesaid, each due January 1st, 1889, and each coupon numbered twenty-three of the series, and also one coupon from each of said bonds numbered as last aforesaid, due July 1st, 1889, and each coupon numbered twenty-four of the series; which said one hundred and twenty-eight coupons, the plaintiff
7 avers, are all of the same tenor except as to the time of maturity, the number of the bond from which cut, and the number thereon indicating the number in the series of coupons as aforesaid, which said coupons number eighteen in the series from bond number eleven is in the words and figures following—that is to say:

STATE OF ILLINOIS.

The County of Franklin will pay to bearer, at the place in the city of New York where the treasurer of the State of Illinois pays the interest on the State debt, the sum of forty dollars on the first day of July, A. D. 1886, being six months' interest on bond number eleven, issued under act approved February 22nd, A. D. 1861.

No. 11. EVAN FITZGERRALL,
Clerk of Board.

And the plaintiff further avers that after the execution and delivery of said bond, to wit, on the first day of December, A. D. 1877, those numbered as aforesaid were each duly registered in the office of the auditor of public accounts of the State of Illinois in conformity with an act of the General Assembly of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1889; and the plaintiff further avers that afterwards, to wit, on the 1st day of August, A. D. 1889, and as the said coupons became due according to the respective times of payment thereof as aforesaid, the same were presented and shown for payment and payment thereof demanded, at the place in the city of New York where the treasurer of the State of Illinois pays interest on the State debt, and payment thereof was then and there refused; by means whereof the said defendant on the day and year aforesaid, at the district
8 aforesaid, became liable to pay to the said plaintiff the sums of money specified in said one hundred and twenty-eight coupons, respectively, on request; and, being so liable, the said defendant afterwards, to wit, on the day and year aforesaid, at the district aforesaid, in consideration thereof, undertook and promised the said plaintiff to pay it the said several sums of money in the said coupons specified when thereunto afterwards requested; yet the defendant, though often requested so to do, has not paid the said sums of money or any or either of them or any part thereof, but has hitherto wholly neglected and refused and still doth neglect and refuse.

And for that whereas the said defendant heretofore, to wit, on the 1st day of August, A. D. 1889, at the district aforesaid, was justly indebted to the said plaintiff in the sum of ten thousand dollars for so much money by the said plaintiff before that time lent and advanced to the said defendant at its request; and in the sum of ten thousand dollars for so much money by the said defendant before that time had and received to and for the use of the plaintiff; and in the sum of ten thousand dollars for so much money before that time and then due and payable from the said defendant to the plaintiff for interest upon and for the forbearance and use of divers sums of money before that time and then owing from the defendant to the plaintiff and by the plaintiff foreborne to the defendant at its request; and in the sum of ten thousand dollars for so much money then and there found to be due and owing from the defendant to the plaintiff on an account then and there stated between them, and

being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district
9 aforesaid, undertook and promised the said plaintiff to pay it the said several sums of money on request, yet the defendant, though often requested so to do, has not paid the said sums of money or any part thereof or any or either of them, but wholly fails and refuses so to do, to the plaintiff's damage ten thousand dollars; wherefore it sues, &c., &c.

E. E. COOK AND
BROWN, WHEELER & BROWN,
Att's for Pl'ff.

Copy of Account Sued On.

The County of Franklin to the German Savings Bank of Davenport, Iowa, Dr.

To money lent and advanced	$10,000
To money had and received	10,000
To money due for interest	10,000
To money due on account stated	10,000

The defendant will take notice that the coupons specified in the first count of the foregoing declaration are the only causes of action in this case, and that the same will be offered in evidence under the special and common counts; also that a copy of said coupons is set out in the said first count, to which reference is made.

E. E. COOK AND
BROWN, WHEELER & BROWN,
Att's for Pl'ff.

10 And afterwards, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and ninety, came the defendant, by Messrs. Browning and Cantrell, its attorneys, and filed in the clerk's office of said court its demurrer to the declaration herein; which said demurrer is as follows, to wit:

In the Circuit Court of the United States of America, of the January Term, A. D. 1890, Southern District of Illinois.

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA, *vs.* THE COUNTY OF FRANKLIN. } No. 7731. Assumpsit.

The defendant, by Browning and Cantrell, its attorneys, comes and defends, etc., when, etc., and says that the said declaration herein and each count thereof and the matters therein contained are not sufficient in law for the plaintiff to maintain its aforesaid action; and the defendant therefore prays judgment, etc.

By BROWNING & CANTRELL, *Att'ys.*

(Indorsed:) Filed January 6th, 1890. James T. Jones, clerk.

Then afterwards, to wit, on the twenty-third day of April, in year last aforesaid, came again the defendant, by its attorneys, and filed in the clerk's office of said court its plea of general issue in the words and figures following, to wit:

11 In the Circuit Court of the United States, Southern District of Illinois, January Term, A. D. 1890.

THE COUNTY OF FRANKLIN
ats.
THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA. } Assumpsit.

The defendant, The County of Franklin, by Browning & Cantrell, its attorneys, for a plea to plaintiff's declaration and each count therein says that it did not undertake and promise in manner and form as therein alleged; and of this it puts itself upon the country.

By BROWNING & CANTRELL, *Att'ys.*

And the pe'ff doth the like.

E. E. COOK &
BROWN, WHEELER & BROWN,
Att'ys for Pe'ff.

(Indorsed:) Filed April 23, 1890. James T. Jones, clerk.

Then afterwards, to wit, on the third day of February, in the year last aforesaid, came again the parties, by their attorneys, and filed in the clerk's office of said court their stipulation waiving a jury, as follows, to wit:

12 GERMAN SAVINGS BANK OF DAVENPORT, IOWA,
vs.
THE COUNTY OF FRANKLIN.

It is hereby stipulated by and between counsel for plaintiffs and defendants that a jury be waived in this cause and cause be tried by court.

E. E. COOK &
BROWN, WHEELER & BROWN,
Att'ys for Pl'ff.
BROWNING & CANTRELL,
Att'ys for Def't.

Dated at Springfield, Ills., Feb. 3rd, 1891.

(Indorsed:) Filed February 3, 1891. James T. Jones, clerk.

Now, afterwards, to wit, on the fourth day of February, in the January term of said court, in the year of our Lord one thousand eight hundred and ninety-one, the following proceedings were had in said court in said cause and entered of record, to wit:

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA,
vs.
THE COUNTY OF FRANKLIN. } Assumpsit.

And now, on this fourth day of February, A. D. 1891, comes
13 again the plaintiff, by Messrs. E. E. Cook and Brown, Wheeler & Brown, its attorneys, and the defendant, by Messrs. Browning and Cantrall, its attorneys, and the issue being joined and, by stipulation in writing signed by the respective counsel, a jury therein waived, *and* the issues of law and fact are submitted to the court, and on consideration thereof it is considered by the court that the issues be, and hereby are, found in favor of the plaintiff; and it is further considered by the court that the plaintiff have and recover of and from the defendant the sum of five thousand one hundred and twenty dollars—$5,120.00—its damages in this behalf sustained, together with the costs to be taxed.

Thereupon the defendant excepts and is allowed ninety days from this date in which to prepare and present a bill of exceptions.

And it is stipulated in open court and made a part hereof that the writ of error from the Supreme Court of the United States for the review of this judgment shall operate as a supersedeas without bond, and that the said case shall be submitted to the October term, A. D. 1891, of the Supreme Court of the United States under the 20th rule of said Court.

14 *Bill of Exceptions.*

Circuit Court of the United States, Southern District of Illinois.

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA,
vs.
THE COUNTY OF FRANKLIN.

Be it remembered that at a term of the circuit court of the United States for the southern district of Illinois, held at Springfield, Illinois, on the 3rd and 4th days of February, A. D. 1891, by the Honorable Walter Q. Gresham, judge, came the German Savings Bank of Davenport, Iowa, by its attorneys, and the defendant, The County of Franklin, by its attorneys; and, this cause coming on for trial, said parties, in writing, waived a jury and proceeded to try said cause by the court.

The plaintiff offered in evidence the records of a former case in this court.

The defendant objected to all of said evidence as being immaterial and irrelevant; which objection was overruled by the court and the defendant excepted to said ruling of the court.

Said records were then received in evidence as follows:

COUNTY OF FRANKLIN
vs.
BELLEVILLE AND ELDORADO RAILROAD COMPANY, George P. Daliy, John Graham, German Savings Bank of Davenport, Iowa; Anthony Reiz, George W. Steele, Sarah E. Bruyn, Peoples' Savings Bank of Evansville, Park Banking Company of Rockville, Indiana; Solomon Rothchild, Benjamin Rothchild, and Thomas E. Garvin. } In Chancery.

15 SOUTHERN DISTRICT OF ILLINOIS, *ss.*:

Be it remembered that heretofore, to wit, on the twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty-one, came the German Savings Bank of Davenport, Iowa, one of the said defendants herein, by Messrs. Cook & Dodge, its solicitors, and filed in the clerk's office of said court a transcript of the papers filed and proceedings thereon had in the circuit court of Franklin county, Illinois; which said transcript of papers filed and proceedings thereon are in the words and figures following, to wit:

Bill.

STATE OF ILLINOIS, }
Franklin County. }

Of the October Term of the Franklin County Circuit Court, 1880.

To the honorable judge of the Franklin county circuit court, in chancery sitting:

The complainant, The County of Franklin, most respectfully represents unto your honor that on the 24th day of July, A. D. 1869, the county court of said county made an order giving notice that on the 11th day of September, A. D. 1869, in the various precincts in said county, at the usual voting places, an election would be held upon the question whether or not the county of Franklin should subscribe the sum of two hundred thousand dollars to the capital stock of the Belleville and Eldorado Railroad Company, payable in county bonds at par, due in twenty years from date, with interest at the rate of eight per cent. per annum, and to be of the denomination of not less than one thousand dollars each, said bonds to be issued upon the following conditions and not until they are
16 complied with:

1st. That said railroad shall be located through Franklin county, running from Duquoin, in Perry county, to the town of Raleigh, in Saline county, within one-quarter of a mile of the court-house in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight house erected within said quarter of a mile of the court-house.

2nd. That said railroad shall be commenced in the county of Franklin within nine months from the date of said election and completed through the county by the 1st day of June, A. D. 1872.

3rd. That one hundred thousand dollars of said bonds, payable on said stock, shall be delivered to said company when said railroad is in running order to, and a station located at, Benton; and one hundred thousand dollars of said bonds to be delivered when said railroad is completed and in running order through said Franklin county.

4th. That there be not less than three stations located in the county, one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Galatia.

5th. That said election shall be open at 8 o'clock in the morning, and continue open until 6 o'clock in the afternoon, and shall be conducted by the judges of election appointed for the November election in 1868, if present; if not, judges may be chosen as at other elections.

6th. That persons voting at such election for subscription shall have written or printed on their tickets, For subscription. Those voting against subscription shall have written or printed on their tickets, Against subscription.

7th. And provided also that said subscription shall re-
17 ceive a number of votes equal to a majority of all the votes cast in said county at the last general election of county officers, as will more fully appear by a reference to a copy of said order, filed herewith and marked Exhibit "A" and made a part of this bill. Complainant further states that on the 11th day of September, A. D. 1869, an election was held in said county on the proposition above named in said Exhibit "A."

That on the 6th day of November, A. D. 1869, the county court of said county, by an order then entered of record, proceeded to subscribe $200,000 to the capital stock of said railroad company on certain conditions and limitations hereinafter mentioned, to wit, said stock was to be paid for according to the terms of said subscription in the bonds of said county at par, payable twenty years after date, with 8 per cent. interest, payable semi-annually.

That said subscription was made to said railroad company on the following conditions, and that said bonds were never to be issued until they were complied with, to wit:

1st. That said railroad shall be located through Franklin county, running from Duquoin, Perry county, to the town of Raleigh, in Saline county, within one-quarter of a mile of the court-house, in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight house erected within said quarter of a mile of the said court-house.

2nd. That said railroad shall be commenced in the county of Franklin within nine months from the date of said election and completed through the county by the 1st day of June, A. D. 1872.

3rd. That one hundred thousand dollars of said bonds, payable on said stock, shall be delivered to said company when said railroad is in running order and the necessary cars running thereon from
Duquoin or Eldorado to Benton and a station located at Ben-
18 ton, and one hundred thousand dollars of said bonds to be delivered when the said railroad is completed and in running

order and the necessary rolling stock thereon through said Franklin county.

4th. That there be not less than three stations located in said county of Franklin—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Galatia.

That at the time said bonds are issued and stock received said railroad, its fixtures and rolling stock, are not to be mortgaged for more than the actual cash value of the same, and that there be no mortgage or lien upon the same under which said railroad, fixtures, or rolling stock can or may be exposed to sale within a shorter time than twenty-five years from the date of such mortgage or lien, as will more fully appear by reference to a copy of said order of said county court, which is filed herewith, marked Exhibit "B," and made a part of this bill.

That the orders above named are the only orders which said county court ever made relating to said subscription to the capital stock — said railroad company at any time prior to the 3rd day of July, A. D. 1870, and that they were the only orders that were ever made for or on behalf of said county relative to said subscription to said railroad company at any time prior to the adoption of the present constitution of the State of Illinois.

That said election held on the 11th day of September, A. D. 1869, was the only election ever held in said county at any time relative to taking stock in said railroad company, and that no subscription except that above named was ever made or attempted to be made by said county to the capital stock of said railroad company at any time prior to the 6th day of February, A. D. 1871.

The complainant is informed and believes, and on information and belief charges the fact to be, that said county court never
19 ordered the clerk of said court or the sheriff of said county to give any notice of the election held on the 11th day of September, A. D. 1869, and that complainant, on information and belief, as above stated, charges the fact to be that neither the clerk or sheriff of said county, or any other person or persons, ever gave any notice of said election as required by law.

That said railroad company never have complied with the conditions and terms on which said stock was subscribed; that no work was commenced within said county on said railroad until the year A. D. 1877, and that no part of the same was completed in said county until some time during the year A. D. 1877.

That on the 6th day of February, A. D. 1871, the county court of said county made an order reciting that on the 6th day of November, A. D. 1869, a subscription of two hundred thousand dollars was ordered to be made to the Belleville and Eldorado Railroad Company, and that said subscription required that the said railroad should be commenced in the county of Franklin within nine months from the date of the election authorizing said subscription to be made, to wit, on the 11th day of June, A. D. 1870, and completed through said county by the 1st day of June, A. D. 1872, and that the time for commencing building of said railroad has expired.

It is therefore ordered that the time for the commencing and

completing of the said railroad be extended, and that the said subscription be made on the stock books of the Belleville and Eldorado Railroad Company upon the following terms and conditions, and not until they are complied with, to wit, that said two hundred thousand dollars ($200,000) subscribed to said capital stock aforesaid be payable in the bonds of county of Franklin at par, said bonds to be due in twenty years from the date thereof, and to draw interest, payable semi-annually, at the rate of eight per cent. per
20 annum, said bonds to be of the denomination of not less than one thousand dollars *cash*.

That said railroad shall be located through Franklin county and running from Duquoin, in Perry county, to the town of Raleigh, in Saline county, within one-quarter of a mile of the court-house in the town of Benton, in the said Franklin county, and that a station be there located and a passenger and freight-house be erected within said quarter of a mile of said court-house.

That said railroad shall be commenced in the county of Franklin on or before the first day of January, A. D. 1872, and completed through the county by the first day of January, A. D. 1874.

That one hundred thousand dollars of said bonds, payable on said stock, shall be delivered to said company when said railroad is in running order and the necessary cars, propelled by steam, running thereon from Duquoin or Eldorado to Benton as aforesaid, and a station located at Benton, and one hundred thousand dollars of said bonds to be delivered when the said railroad is completed and in running order, and necessary rolling stock thereon, through said Franklin county; that there be no less than three stations located in the said Franklin county—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Galatia; all of which will more fully appear by reference to a copy of the said order of said county court, which is filed herewith, marked Exhibit "C," and made a part of this bill.

That complainant is informed and believes, and on information and belief charges the fact to be, that no subscription was ever made by said county court on the stock books of said company prior to the said 6th day of February, A. D. 1871, and that if any subscription was ever made by said county court on the stock books of said railroad company it was made after the 6th day of February,
21 A. D. 1871, on the terms and conditions mentioned in said order made on the 6th day of February, A. D. 1871, and not upon the terms and conditions as shown and set forth in said Exhibits "A" & "B;" that on the 9th day of March, A. D. 1871, the county court of said county made an order stating that whereas on the 11th day of September, A. D. 1869, upon a proposition for Franklin county to subscribe two hundred thousand dollars to the capital stock of the Belleville and Eldorado Railroad Company, a majority of the legal voters of the county voted for the said subscription: Now, therefore, the county of Franklin, of the State of Illinois, acting by the county judge and the associate judges of the Franklin county court, and attested by the official seal of said Franklin county court, do hereby subscribe the sum of two hundred

thousand dollars for two thousand shares of the capital stock of the Belleville and Eldorado Railroad Company, said shares to be of the amount of one hundred dollars each; said stock is subscribed and the bonds to be issued upon the following conditions, and not until they are fully complied with, to wit: Said stock to be paid in Franklin county bonds at par, the bonds to be payable in twenty years after date, with interest at eight per cent. per annum, payable semi-annually in New York, the bonds to be of the denomination of one thousand dollars each, with coupons for the interest attached thereto, the said county bonds to be delivered to said company as follows: One hundred thousand dollars of said bonds to be delivered when the section of said railroad extending from the eastern boundary of Franklin county to Benton is completed in good running order and a train of cars propelled by steam shall have run over the same, it being left optional with the company which section of the road it will build first, and the bonds of the county due on either section of the road shall be delivered to said company when that
22 section is completed and the cars shall have been run over it to Benton as aforesaid; and said county bonds shall be valid and binding on the county from and after the delivery thereof to said company; and the faith of Franklin county is hereby pledged for the payment of the bonds issued to Belleville and Eldorado Railroad Company, the said railroad to be commenced within the county within one year and completed through the county within three years from the date of this subscription, it being further provided that said railroad company shall erect a passenger and freight depot on said railroad at Benton, within one-quarter of a mile of the present court-house, and at least one other freight and passenger depot between Benton and each of the county lines in said Franklin county through which the road shall run. It is further provided that this subscription and those formerly made shall not be construed as intending to subscribe more than two hundred thousand dollars to said Belleville and Eldorado Railroad company or to any company or companies that may build railroads within said county, as will more fully appear by reference to a copy of said order, which is filed herewith, marked Exhibit "D," and made a part of this bill.

The complainant further states that on the 13th day of December, A. D. 1876, the board of supervisors of said county, having adopted township organization, made an order to effect following, to wit:

Whereas in the various precincts of the county of Franklin and State of Illinois, at the usual voting places therein, on Saturday, September 11th, A. D. 1869, an election was held in pursuance of an order made at special term of county court of Franklin county, began and held at the court-house, in Benton, on Saturday, the 24th day of July, A. D. 1869, upon the question whether or not the county of Franklin should subscribe the sum of two hundred thousand dollars to the capital stock of the Belleville & Eldorado
23 Railroad Company, payable in county bonds at par, due twenty years from date, with the privilege of paying after five years from date, with interest, payable semi-annually, at the rate

of eight per cent. per annum, and to be of the denomination of not less than one thousand dollars each; and whereas at such election the qualified voters of said county did, by a majority of the votes, taking as a standard the number of votes cast for county officials at the last general election previous to the vote had upon the question of subscription as aforesaid, authorize the county court of said Franklin county to subscribe the sum of two hundred thousand dollars to the capital stock of said Belleville & Eldorado Railroad Company: therefore, at a regular meeting of the board of supervisors of Franklin county, began and held at the court-house, in the town of Benton, county of Franklin and State of Illinois, on Wednesday, the 13th day of December, A. D. 1876—present, James M. Brayfield, chairman; Wm. Flatt, S. P. Kirkpatrick, L. Day, C. Moore, M. C. Ingram, W. B. Tyrell, J. M. Weir, & J. W. Williams, members of the board of supervisors, with Evan Fitzgerrall, county clerk, and James M. Akin, sheriff—the following order was entered, that is to say: It is considered and ordered by the board of supervisors of said county, by authority of the vote heretofore mentioned and the authority of an act of (the) General Assembly of the State of Illinois entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, A. D. 1861, and an act of the said General Assembly approved November 6th, A. D. 1849, authorizing counties to take stock in railroad companies, that the county of Franklin, in the State of Illinois, does hereby subscribe to the capital stock of the Belleville & Eldorado Railroad Company the sum of one hundred and fifty thousand dollars, being seventy-
five thousand dollars by virtue of each of the acts of the
24 General Assembly herein mentioned; that said capital stock
so subscribed as aforesaid be payable in the bonds of Franklin county aforesaid at par; said bonds to be due in twenty years and may be paid after the expiration of five years from their date, at the option of the county; said bonds as aforesaid to draw interest at (the) rate of eight per cent. per annum, interest payable semi-annually, and to be of the denomination of not less than one thousand dollars each. It is further ordered by the board of supervisors that the said bonds be issued and placed in the hands of trustee, to be paid out upon the following conditions:

1st. That said railroad shall be located through Franklin county, running from the junction of said road near the west line of Saline county, Illinois, to Duquoin, Perry county, Illinois, and within one-fourth of a mile of the court-house, in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight depot be there located within said one-fourth of a mile of said court-house.

2nd. That said road shall be commenced within thirty days from the date of this order and completed by the 15th day of October, A. D. 1877.

3rd. That seventy-five thousand dollars of said bonds be applied to the building of the road from said junction in Saline county to Benton, in Franklin county, and that seventy-five thousand dollars be applied to the building of the road from Benton to Du-

quoin, to be delivered and paid to the contractors as each mile of the road is completed under the contract in proportion to the whole number of miles in each division built, and providing that the contract of building is to include the building of the whole road from Saline county to Duquoin.

4th. That there be not less than three stations located in
25 said county of Franklin—one at Benton as aforesaid, one between (Benton) and Duquoin, and one between Benton and the Saline county line, as will more fully appear by reference to copy of said order made by said board of supervisors as aforesaid, which is filed herewith, marked Exhibit "E," and made a part of this bill.

The complainant further represents that on the 12th day of November, A. D. 1877, and long after the period limited for the completion of said railroad in and by the terms of the said order of the board of supervisors on the said 13th day of December, A. D. 1876, had expired, and long after the alleged subscription at that time claimed to have been made had lapsed, become null and void, the board of supervisors of said county made another order to the effect following, to wit:

It is therefore considered and ordered by the board of supervisors of Franklin county, in the State of Illinois, that the order of said board made on the 13th day of December, A. D. 1876, subscribing $150,000.00 to the Belleville and Eldorado Railroad Company be, and the same is hereby, amended as follows, to wit: that the said order subscribing said stock read as follows, to wit:

That the county of Franklin, in the State of Illinois, under the provisions of an act of General Assembly of the State of Illinois, entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, A. D. 1861, authorizing subscription to the capital stock of said railroad, and in accordance with the majority of votes cast at an election held in said Franklin county, in conformity with said act, on the 11th day of September, A. D. 1869, does hereby subscribe the sum of one hundred thousand dollars to the capital stock of the Belleville and Eldorado Railroad Company, payable in bonds of said Franklin county at par, said bonds to be due twenty years after the date thereof and pay-
26 able at the option of said Franklin county after five years; said bonds to bear interest from date, at the rate of eight per per cent. per annum, payable semi-annually; said bonds to be of the denomination of one thousand dollars each; and that the county of Franklin, in the State of Illinois, under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to authorize cities and counties to subscribe stock to the railroad," approved November 6th, A. D. 1849, and under the authority as evidenced by a majority of the qualified voters of said Franklin county, at an election held in said county in conformity with the provisions of said act, on the 11th day of September, A. D. 1869, does hereby subscribe the sum of fifty thousand dollars to the capital stock of the Belleville & Eldorado Railroad Company, payable in bonds of said Franklin county at par; said bonds to be due twenty years

after date thereof, and payable at the option of said Franklin county after five years; said bonds to bear interest from date, at the rate of eight per cent. per annum, payable semi-annually; said bonds to be of the denomination of one thousand dollars each:

It is therefore considered and ordered by the board of supervisors of Franklin county, in the State of Illinois, that the chairman of the board of supervisors of said Franklin county and the clerk thereof are hereby ordered and directed to execute bonds of said Franklin county in payment of said amended subscription to the capital stock of the Belleville and Eldorado Railroad Company as follows, to wit:

That said chairman and said clerk execute one hundred bonds of said Franklin county of the denomination of one thousand dollars each, payable to the Belleville and Eldorado Railroad Company or bearer twenty years after the date thereof, and payable at any time after five years and before said bonds become due, at the op-
27 tion of said Franklin county, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the 1st day of January and July of each year; said bonds and the interest thereon to — made payable in the city and State of New York, at the place where the treasurer of the State of Illinois pays the interest and debt of said State; said bonds to be executed in conformity with and under the provisions of an act to incorporate the Belleville and Eldorado Railroad Company, approved February 22nd, A. D. 1861, authorizing subscription to the capital stock of said railroad company, and in accordance with a majority *with* the provisions of said act, on the 11th day of September, A. D. 1869.

It is further ordered by said board of supervisors of said Franklin county that the chairman of said board of supervisors and the clerk are hereby ordered and directed to execute bonds of said Franklin county in payment of said amended subscription to the capital stock of the Belleville and Eldorado Railroad Company as follows, to wit: That said chairman and said clerk execute fifty bonds of said Franklin county of the denomination of one thousand dollars each, payable to the Belleville and Eldorado Railroad Company or bearer twenty years after the date thereof, and payable at any time after five years and before said bonds become due, at the option of said Franklin county, with interest thereon from the date thereof at the rate of eight per cent. per annum, payable semi-annually on the 1st day of January and July of each year; said bonds and the interest thereon to be made payable in the city and State of New York at the place where the treasurer of the State of Illinois pays the interest and debt of said State; said bonds to be executed in conformity with and under the provisions — entitled "An act to authorize cities and counties to subscribe stock to railroads," approved November 6th, A. D. 1849, and as authorized by a
28 majority of the qualified voters held in said county, in accordance with the provisions of said act, on the 11th day of September, A. D. 1869. It is further ordered by the board of supervisors of said Franklin county that the clerk of said court make a

record of said bonds and coupons thereto attached, as required by law.

It is further considered and ordered by the board of supervisors that John G. St. Clair, chairman, and Joseph M. Weir, member, of said board, are hereby appointed commissioners in behalf of said Franklin county, and said commissioners are hereby ordered and directed to safely convey said bonds above described when executed to the city of Evansville and deposit the same with the Evansville National bank, trustee as aforesaid, and take receipt therefor.

Said commissioners are further ordered and directed to receive from said trustee, in exchange for said bonds so deposited by them, the aforesaid mentioned 150 bonds of said Franklin county executed as aforesaid on the 22nd day of December, A. D. 1876, and delivered the same to said board of supervisors or its committee appointed to cancel and destroy the same. It is further ordered by the board of supervisors of said Franklin county that said Evansville National bank, trustee as aforesaid, receive said bonds to be executed pursuant to the order of said board of supervisors at their special November term, A. D. 1877, and that said trustee hold said bonds and deliver the same to said railroad company only on the same conditions and under the same restrictions as specified in the order of said board of supervisors made as aforesaid on the 13th day of December, A. D. 1876, as will more fully appear by reference to a copy of said order made aforesaid, which is filed herewith, marked Exhibit, "F," and made a part of this bill. Complainant further represents that on the 5th day of March, A. D. 1878, the board of supervisors of said county adopted a resolution ex-
29 tending the time to the board of directors (of) the said Belleville and Eldorado Railroad Company until the 15th day of day of September, A. D. 1878, for the building of said railroad, as will more fully appear by reference to a copy of said resolution, which is filed herewith, marked Exhibit "G," and made a part of this bill. Complainant further states that on the 22nd day of July, A. D. 1878, said board of supervisors adopted a resolution to the effect following, to wit: Whereas one hundred and fifty of the railroad bonds of Franklin county as bonds of this county which were designated to be paid upon certain conditions to the Belleville and Eldorado Railroad Company for stock for the sum of one thousand dollars each were deposited with the Evansville National bank, Evansville, Indiana, as trustee, by the supervisors of said county under and by virtue of an order of said board of supervisors made at the November special meeting thereof, A. D. 1877; and whereas there is doubt of the legality of placing said bonds out of the immediate custody and possession of this board: Therefore it is ordered by the said board of supervisors of said county that Chas. A. Akin, county clerk of said county, be, and he is hereby, appointed agent and commissioner for and on behalf of said county to proceed to Evansville, Indiana, at once, and for and on behalf of Franklin county demand and receive said bonds from said bank and receipt for the same and pay said bank all reasonable charges for keeping said bonds, and that said Chas. A.

Akin keep and retain the possession of the said bonds for and on behalf of this board of supervisors until otherwise directed by this board or the successors thereof, and that said Chas. A. Akin report to this board at its next meeting of his acts and doings under this order. Dated this 22nd day of July, A. D. 1878.

A copy of said resolution is filed herewith, marked Exhibit "H," and made a part of this bill; that on the 16th day of September, A. D. 1878, the board of supervisors of said county
30 adopted a resolution to effect following, viz: That we request Judge D. M. Browning to make a report to this court as to the amount of Franklin county bonds he has signed, as agent on behalf of Franklin county, to the Belleville & Eldorado Railroad Company or the contractors of said road, said report to contain the numbers of the several bonds and under what act issued; also to show the amount of stock by certificates that have been given by said railroad company, and to make report to this board at 1 o'clock p. m. of this day. Dated this September 16th, A. D. 1878.

Copy of said resolution is filed herewith, marked Exhibit "I," and made a part of this bill; that on said 16th day of Sept., A. D. 1878, Hon. D. M. Browning, in response to the resolution last mentioned, made a report to said board of supervisors, which was entered of record in said supervisors' court. Said report is in substance and to the effect following, to wit:

To the hon. board of supervisors of Franklin county, Illinois:

The undersigned, county judge of Franklin county, Illinois, would respectfully report, in accordance with your resolution of this day, that under the contract made by your board subscribing stock to the Belleville and Eldorado Railroad Company I have given orders to James Hill & Co. for the Franklin county bonds as each mile of said railroad was built from Saline county, Illinois, to Benton, and under said orders James Hill & Co. have (received) from the Evansville National bank, as trustee, $75,000 in Franklin county bonds, being bonds Nos. *L* to seventy-five (75), inclusive, issued under act of February 22nd, A. D. 1861, incorporating the Belleville and Eldorado Railroad Company. The Evansville National bank, as trustee, holds, subject to the orders of the board of supervisors of
31 this county, $75,000 in certificates of stock issued by said railroad company to Franklin county, Illinois. There has been one-half of the bonds delivered and one-half of the stock certificates deposited under the subscription made by your hon. body.

Respectfully submitted.

D. M. BROWNING.

September 16th, 1878.

A copy of which report by said D. M. Browning as aforesaid is filed herewith, marked Exhibit "J," and made a part of this bill; that on the 16th day of September, A. D. 1878, the said Belleville and Eldorado Railroad Company, by Youngblood, their solicitor, represented to said board of supervisors a petition, which petition was entered on the records of said court, and is to the effect following, to wit:

STATE OF ILLINOIS, } ss:
County of Franklin, }

To the honorable board of supervisors of Franklin county, Illinois:

The Belleville and Eldorado Railroad Company respectfully represents unto your honorable body that, in pursuance to the contract heretofore made with this hon. body, James Hill & Co., the contractors for the construction of said railroad from the east line of said county of Duquoin, in Perry county, Illinois, have completed said railroad to Main street, leading from the court-house, in Benton, and within one-fourth of a mile of said court-house, and that the trains of cars have been propelled over said road by steam; that the time allowed by your honorable body for the completion of said railroad expired on the 15th instant; that no further extension of said road can be made without the friendly co-operation of your hon. body in extending the time to said company and contractors for the completion of said road. Said company feel warranted
32 in stating that if a reasonable time be fixed upon by your hon. body that work will at once progress on said road, but owing to the fact that the winter season is rapidly approaching, in which the work may be necessarily delayed in consequence of unfavorable weather, the company feel constrained to ask for an extension of one year from this date. If however, your honorable body should feel disinclined to act in the premises at this time so as to insure the success of the enterprise, your petitioners respectfully ask that you adjourn without acting for such time as will enable each *each* of your honorably body to consult his constituents on the subject of an extension of time.

F. M. YOUNGBLOOD,
Solicitor for the Belleville & Eldorado Railroad Company.

A copy of said petition is filed herewith, marked Exhibit "K," and made a part of said bill.

That afterwards, to wit, on the said 16th day of September, A. D. 1878, the board of supervisors of said county adopted a resolution to the effect following, to wit:

STATE OF ILLINOIS, } ss:
County of Franklin, }

To the chairman and gentlemen of the board of supervisors of Franklin county, Illinois:

Whereas there are one hundred and fifty bonds of the denomination of one thousand dollars each issued in aid of the Belleville & Eldorado Railroad Company for the construction of a railroad through the county of Franklin and State of Illinois at the special November term, A. D. 1876, with the express understanding that said road was to be completed through the said county to Duquoin, in Perry county, Illinois, by the 15th day of March, A. D. 1878; and whereas said railroad company failed upon their part to complete said railroad according to the contract last above mentioned; and

33 Whereas the county board of said county did at the March term, A. D. 1878, extend the time for the completion of said road to the said company until the 15th day of September, A. D. 1878; and whereas the said railroad company agrees to complete said road according to the contract last above mentioned:

Therefore be it resolved by the county board of said Franklin county at a special meeting held for county business on the 16th day of September, A. D. 1878, That we do hereby declare the said contract at an end, and that we do authorize and request the First National Bank of Evansville, Indiana, to transmit by express to Duquoin, Illinois, all the books and certificates of stock in said railroad that may be in possession of said bank to Chas. A. Akin, who is commissioner and agent on behalf of the people of said Franklin county, and the said Chas A. Akin is hereby authorized to receipt for the same and pay all reasonable charges and safely keep said bonds for the further action of the said county board. A copy of said resolution is filed herewith, marked Exhibit "L," and is made a part of this bill.

That on the 21st day of October, A. D. 1878, the board of supervisors of said county made an order to the effect following, to wit: Resolved by the board of supervisors of Franklin county in special meeting assembled, That the time for the completion of the said Belleville and Eldorado railroad from Benton to Duquoin be extended to said company and contractors until the first day of November, A. D. 1879; and be it further ordered by said board of supervisors that said Evansville National bank as aforesaid be, and is hereby, ordered to pay said railroad company the bonds of said county now in its hands as soon as the railroad is completed to Duquoin, as provided in said original contract. A copy of said order is filed herewith, marked Exhibit "M," and made a part of this bill.

34 Complainant further states that on the 4th day of June, A. D. 1879, the board of supervisors of said county adopted a resolution to the effect following, to wit: Resolved by the board of supervisors of Franklin county, That the suit now pending in the circuit court of Franklin county, in which The County of Franklin is complainant and The Belleville and Eldorado Railroad Company and others are defendants, it being a bill in chancery to enjoin the delivery of the bonds of said county now in the hands of the Evansville National bank, as trustee, to the Belleville and Eldorado Railroad Company under its contract with said county as said railroad shall be completed to Duquoin, be dismissed and continued, and that said bonds be delivered in strict compliance with the original contract made with the said county and the railroad company and the contractors. And be it further resolved by the board of supervisors, That John J. St. Clair hereafter as said road progresses from Benton to Duquoin examine and receive said road under said contract as therein provided by the county judge of said county to do and give orders to the trustee for said bonds, and that the trustee hereafter deliver said bonds on the order of the said John J. St. Clair showing that said railroad has been completed as provided in said contract. And

be it further resolved, That on the delivery of said bonds or any part thereof on the order of the said John J. St. Clair the chairman of this board is hereby directed to attach his certificate of registration to each of said bonds. And be it further resolved, That all resolutions of this board heretofore passed on this subject inconsistent herewith be, and the same are hereby, repealed and revoked. And it is further resolved that F. M. Youngblood be, and he is hereby, authorized and empowered to take such legal steps as may be necessary to have said suit above mentioned dismissed and
35 discontinued.—S. F. Buntin, mover. By request the yeas and nays are called for on adoption of the above resolution, which showed the following votes: Yeas—John J. St. Clair, Joseph Hammonds, S. F. Buntin, John G. Bowling. Nays—Jesse Taylor, J. W. Williams, J. M. Darr, James Martin.

There being a tie vote, the chairman voted in the affirmative.

A copy of said resolution is filed herewith and marked Exhibit "N" and made a part of this bill. The complainant further states and charges the fact to be that the above and foregoing orders and resolutions are all the orders and resolutions which were ever passed, made, or adopted by the county court of said county with reference to subscription of stock to the Belleville and Eldorado Railroad Company or the issuance of bonds in payment of such stock or the board of supervisors of said county subscribing to the capital stock of said Belleville & Eldorado Railroad Company or pretending or attempting to subscribe to the capital stock of the Belleville and Eldorado Railroad Company; that no order or orders, resolution or resolutions, were ever made, passed, or adopted by the county court of said county or supervisors of said county extending the time to commence, complete, or construct said railroad except the orders and resolutions above named in this bill; that the election held on the 11th day of September, A. D. 1869, is the only election that was ever held in said county authorizing said county to subscribe to the capital stock of the Belleville & Eldorado Railroad Company; that the terms and conditions and limitations on which said stock was voted at said election and the terms, conditions, and limitations on which said stock was subscribed to said railroad company on the 6th day of November, A. D. 1869, have never been revoked, changed, altered, amended, or modified by the voters of said county or the county court of said county or the board of supervisors of said county, and that the order of the county
36 court of said county, made as aforesaid on the 24th day of July, A. D. 1869, and that the said order made by the county court of said county on the 6th day of November, A. D. 1869, are all the orders, resolutions, or proceedings which were had or made, passed, adopted, or entered by said county court of said county prior to the 9th day of February, A. D. 1871, relative to subscribing stock to said railroad company or constructing said railroad; that said county never was under township organization until the year A. D. 1872; that said railroad company have never complied with the terms, conditions, and limitations on which the subscription of said county was voted at said election and subscribed by said county

court on the 6th day of November, A. D. 1869; that the work was not commenced to build or construct said railroad in said county within nine months from the date of said election, nor was it completed through said county by the 1st day of June, A. D. 1872.

That no work was done in said county to build or construct said railroad until after the month of March, A. D. 1877, and it was not commenced in said county of Franklin until after the month of March, A. D. 1877, and that said railroad was not completed through said county until the month of October, A. D. 1879.

That soon after the aforesaid order was made on the 13th day of December, A. D. 1876, one hundred and fifty bonds of said county, due twenty years after date, of the denomination of one thousand dollars each, to be paid after the expiration of five years from the date thereof, at the option of said county, to draw interest at the rate of eight per cent. per annum, were issued with coupons thereto attached, directed and ordered by the board of supervisors of said county in their said order heretofore mentioned, made on the 13th day of December, A. D. 1876; that said bonds were afterward placed in the hands of a trustee to be paid out upon the terms and
37 conditions made in said order of said board of supervisors last above named; that after said order of the said board of supervisors of said county was made, on the 12th day of November, 1877, changing and amending said order made on the 14th day of December, A. D. 1876, one hundred bonds of said county of the denomination of one thousand dollars each, payable in twenty years after the date thereof, and payable at the option of said Franklin county after five years, to bear interest from date at the rate of 8 per cent. per annum, payable semi-annually on the 1st days of January and July of each year, were issued and placed in the hands of a trustee to be delivered and paid out as mentioned in said order.

That said bonds were to be made payable to the Belleville & Eldorado Railroad Company, or bearer, the interest thereon to be made payable in the city and State of New York.

That said bonds purported to be issued under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, A. D. 1861.

That on the same day fifty bonds of said county were issued of the denomination of one thousand dollars each, and were also placed in the hands of said trustee, to be paid out and delivered upon the same conditions and terms as the one hundred bonds last mentioned, were to bear interest from date at the rate of 8 per cent. per annum, payable on the 1st day of January and July of each year, the bonds and interest to be paid in the city and State of New York. Said fifty bonds last above named purported to be issued under an act of the General Assembly of the State of Illinois, approved November 6th, A. D. 1849, authorizing counties to take stock in railroad companies, and said fifty bonds last above named were numbered from 1 to 50, inclusive; that bond numbered fifty of the
38 fifty bonds last above named was not delivered to said railroad company under said agreement or order of said board

of supervisors. A copy of said bond numbered fifty last above named is filed herewith, marked Exhibit "O," and made a part of this bill. That the one hundred and fifty bonds issued as aforesaid by an order of the board of supervisors of said county as aforesaid on the 13th day of December, A. D. 1876, were never delivered to said railroad company, but were destroyed by order of said board of supervisors; that no bond or bonds were ever issued by said county in payment of stock to said railroad company after the 13th day of November, A. D. 1877, nor *was* any bonds of said county ever issued in pursuance of said election held on the 11th day of September, A. D. 1869, until after the 13th day of December, A. D. 1876; that, in violation of the terms, conditions, and limitations on which said subscription was voted and subscribed to the capital stock of the Belleville and Eldorado Railroad Company, the board of supervisors of said county paid out said bonds or caused them to be paid out, and delivered to said Belleville and Eldorado Railroad Company or its contractors the said 149 bonds of said county issued under the said order of the said board of supervisors on the 13th day of November, A. D. 1877, as follows, to wit, as each mile of the road was completed under the contract in proportion to the whole number of miles in each division built, the contract of building is to include the building of the whole road from Saline county to Duquoin. The said Belleville & Eldorado Railroad Company thereby received about ($5,000) five thousand dollars for each and every mile of the road as they completed the same, which was in violation of the terms, conditions, and limitations upon which the said stock was voted and subscribed. That said one hundred bonds of said county which were issued as aforesaid, and purporting to be issued under the act of the General Assembly of the State of Illinois entitled "An act to incorporate the
39 Belleville & Eldorado Railroad Company," were numbered from one to one hundred, inclusive, and were each dated the 13th day of December, A. D. 1877; that said railroad was constructed from Eldorado, Illinois, to Benton, in said Franklin county, about the 15th day of September, A. D. 1878; that seventy-five of the county bonds were delivered to said railroad company as aforesaid at and prior to the time it was constructed to Benton as aforesaid; that said road was constructed from Benton, in said county, to Duquoin, Illinois, after the 12th day of October, A. D. 1878; and that seventy-four of county bonds issued as aforesaid were delivered to said railroad company after said 21st day of October, A. D. 1878; that twenty-five of said bonds, so delivered as aforesaid, were from number seventy-six to number one hundred, inclusive, purporting to be issued under the said act of the General Assembly of the State of Illinois, entitled "An act to incorporate the Belleville and Eldorado Railroad Company, approved February 22nd, A. D. 1861;" that forty-nine of said bonds so delivered as last aforesaid purported to be issued under an act of the General Assembly of the State of Illinois entitled "An act to authorize cities and counties to subscribe stock to railroads, approved November 6th, A. D. 1849;" and that said forty-nine bonds were numbered from one to forty-nine, inclusive; that the above-named one hundred and forty-nine bonds are

the only bonds of said county which were ever delivered to any railroad company or companies, and that they are the only bonds ever issued by said county to or in aid of any railroad company or companies, except the one hundred and fifty bonds issued and destroyed as aforesaid; that the seventy-four bonds of said county last above named were delivered to said railroad company before the presiding judge of the county court of said Franklin county had ever certified under oath that all the pre-
40 liminary conditions required to be done by the 17th section of an act of the General Assembly of the State of Illinois entitled An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns, approved April 16th, A. D. 1869, to authorize the registration of said bonds, and to entitle them to the benefits of this act, had been complied with, nor did the presiding judge of said county court ever make or transmit such certificate to the State auditor at any time before said seventy-four bonds last above named, or either of them, were delivered to said railroad company, nor did the presiding judge of said county court, at any time prior to the delivery of said seventy-four bonds or either of them, last above named, to said railroad company, make, transmit, or forward to said State auditor a statement of the date, amount, number, maturity, and rate of interest of such bonds, and to what company and under what law issued; that if any such certificate or statement was ever made by said presiding judge it was made long after all of the seventy-four bonds last above named were delivered to said railroad company; that the board of supervisors of said county, by their aforesaid resolution, passed and adopted June 4th, A. D. 1879, as shown in the aforesaid Exhibit "N," attempted to supersede the presiding judge of said county court by substituting one John J. St. Clair to examine and receive said railroad instead of the county judge, and that said St. Clair did proceed to obey and did carry out said resolution and did make all the certificates, statements, and oaths which said 17th section of the act last aforesaid required the presiding judge of said county court to make, and that said St. Clair did forward the same to the State auditor, and that said St. Clair caused said seventy-four bonds last above named to be delivered to said railroad company, as provided in said Exhibit "N."

41 The complainant further states that the said Belleville and Eldorado Railroad Company did on the 31st day of October, A. D. 1877, execute a trust deed to the Farmers' Loan and Trust Company of the City and State of New York upon all of said road, excepting and excluding fifteen miles in Saline county, Illinois, with the lands, depots, grounds, ways, right-of ways, station-houses, machine and all other shops and houses and buildings, structures, and road-beds, tracks, sidings, cars, engines, tenders, rolling stocks, and machinery, tools, impliments, fuel, material, and property, both real and personal, and all rights, credits, incomes, earnings, profits, choses in actions, and franchises of the party of the first part, connected with or appertaining to said line of railroad, intending thereby to include all the property belonging to or which might thereafter be

acquired by the party of the first part, as connected with or appertaining to said line of railroad now constructed or to be constructed, equipped, and operated, and all rights and privileges and appurtenances thereunto belonging; to have and to hold the same and every part thereof to said party of the second part, their successors and assigns, for the uses therein expressed; that said trust deed was given to secure the first-mortgage bond- — said railroad to the amount of about $350,000.00, exclusive of the interest to accrue thereon at the rate of 6 per cent. per annum, payable half yearly; that by the terms of said trust deed if any installment of interest on said bonds remains unpaid for six months after due, then the entire sum of said bonds mentioned in said trust deed shall become due and payable at once, and upon the election of a majority of those interested in said bonds the said railroad and all its lands, depots, grounds, ways, right- of ways, station-houses, machine and all other shops, houses, buildings, tenements, road-beds, tracks, sidings, cars, engines, tenders, rolling stock, machinery, tools, implements, fuel, fixtures, &c., &c., may all be exposed to public
42 sale in the city of New York on forty days' notice, all of which will more fully appear by reference to a copy of the record of said trust deed, which is filed herewith and marked Exhibit "P" and made a part of this bill; that said trust deed was filed for record in the recorder's office of Franklin county, Illinois, on the 6th day of February, A. D. 1878. And complainant states that said Belleville & Eldorado Railroad Company deposited with the clerk of the county court of Franklin county, Illinois, after it pretended to have completed said railroad through Franklin county, $150,000 in certificates of stock in said railroad company, which stock is under control of complainants, but which has never been used by them for any purpose, and, in consequence of the mortgage upon said railroad as aforesaid and of the poor quality and character of said railroad and of other causes, is generally worthless, yet complainants are ready and willing and hereby offer to surrender said stock as a condition precedent to the relief prayed for; that complainants *is* informed and believes that one James Hill and William H. Nye, who were the contractors to build said road under the firm name (of) James Hill and Co., hold some of said bonds of said county; and also that one James M. Warren, of the city of Evansville, State of Indiana, holds some of the said bonds of the said county, and also W. Bayard Cutting holds some of said bonds; and that other persons whose names are unknown to the complainants holds the remainder of said bonds; that the amount of taxes levied and assessed by the State auditor on the taxable property of said Franklin county for the year A. D. 1879 to pay the interest, &c., on the aforesaid bonds of said county amounts to the sum of seventeen thousand one hundred and ninety-four dollars and thirty-four cents ($17,194.34); that W. D. Seeber, sheriff and collector of said county, has col-
43 lected and paid over to the State treasurer $10,265.76 of said amount so levied and assessed by said auditor, leaving balance in hands of said collector of $6,928.58 collected and to be collected. The complainant avers and charges the fact to be that all orders and resolutions of the county court of said county

or board of supervisors of said county subscribing or attempting to subscribe stock to said railroad company are in conflict with the constitution of the State of Illinois, and are void; that the act of the General Assembly of the State of Illinois entitled An act to incorporate the Belleville and Eldorado Railroad Company, approved February 22nd, A. D. 1861, does not authorize any county to subscribe additional stock to said railroad company in addition to the sum limited by the act of the 6th day of November, A. D. 1849, nor to *the* issue interest-bearing bonds or evidence of indebtedness bearing interest, and that all the bonds issued under the first-mentioned act are void.

Complainant further avers and charges that even if there had been any notice of the election for or against subscription claimed to have been held on the 11th day of September, A. D. 1869, or any canvass of the votes of said election, and a majority found to be in favor of subscription, that the subscription made by the county court on the 6th day of November, A. D. 1869, exhausted completely all power of the county under the vote at said election to make subscription, and that all subsequent attempts by the county court or board of supervisors of said county to make other subscriptions containing other conditions or conditions different from those in the order calling the said election are null and void. The complainant avers and charges the fact to be that the State auditor has no right to estimate, levy, or assess any tax or taxes against the taxable property of said county for the purpose of paying the principal or interest of said county bonds, but that he will do so unless restrained by injunction, and that the State treasurer has
44 no right to receive or pay out money for that purpose, but will do so unless restrained by injunction; that the 13th, 14th, 15th, and 16th sections of the act of the General Assembly of the State of Illinois entitled An act to fund and provide for paying the railroad debts of counties, townships, cities, & towns, approved April 16th, A. D. 1869, *is* unconstitutional, contrary to public policy, and are void. The complainant makes the said Belleville and Eldorado Railroad Company, Chas. A. Akin, county clerk of Franklin county, Illinois; W. D. Seeber, sheriff and collector of Franklin county, Illinois; Thomas B. Needles, auditor of public accounts of the State of Illinois; J. C. Smith, State treasurer of the State of Illinois; the said W. Bayard Cutting, the said James Hill, and William H. Nye, and the said James M. Warren and the unknown holders of the said bonds of said county, party defendant to this bill, and prays that summons may issue for them, and that they be required to answer this bill, but not under oath, their several oaths to their respective answers being hereby expressly waived. The complainant prays that a writ of injunction may issue restraining and enjoining the said Thomas B. Needles, auditor, and his successor or successors in office, from estimating and determining the rate per centum on the valuation of property within said Franklin county requisite to meet and satisfy the amount of interest due or to become due on said bonds, and that he also be enjoined from making or transmitting to the county clerk of said Franklin county any certificate or cer-

tificates stating such requisite for paying interest on any of them, and that Chas. A. Akin, county clerk of said Franklin county, and his successor and successors in office, be enjoined from adding the same or extending or placing the same on the collector's book or books of said Franklin county, and that the said James Hill,
45 William H. Nye, W. Bayard Cutting, and the said Belleville and Eldorado Railroad Company, James M. Warren, and the unknown holders of the said bonds of said county and each of them be enjoined from suing said county on any or either of the coupons of said bonds or on any or either of them, and that the said J. C. Smith, State treasurer of the State of Illinois, or his successors in office, be enjoined from paying the coupons on said bonds or either of them, or any of said bonds or either of them, and that the said W. D. Seeber, sheriff and collector of said county, and his successors in office, be enjoined from collecting an- more of the taxes to pay the interest on said bonds, and from making any further payment to the State treasurer of the money collected to pay the interest on said bonds, and that upon a final hearing of this cause an order and decree be made and entered decreeing that said election, held on the 11th day of September, A. D. 1869, was illegal and void; that the subscription made by said county court on the 6th day of November, A. D. 1869, to the capital stock of said Belleville and Eldorado Railroad Company and all subscriptions or amendments, modifications, and alterations are void and not binding on said county; that the so-called subscription of $150,000 to the said capital stock, made on the 13th day of December, A. D. 1876, and the attempt made by said county board on the 12th November, 1877, to amend said subscription and to contract for the building of said railroad is unlawful, void, and not binding on the county; that said bonds and each and every one of them, by whomsoever held, be declared void, and each and every coupon attached to said bonds or either of them be declared void, and that the holders thereof be required to surrender the same for destruction; that the injunction above prayed for be made perpetual and grant unto the complainant such other and further relief as the facts and circumstances of the case may seem to require and your honor deem meet.

W. J. ALLEN,
THOS. J. LAYMAN,
Solicitors for Complainant.

46 At chambers at Vienna, Johnson county, Illinois, June 26th, 1880.

Motion by complainants for a temporary stay order restraining the State treasurer from paying interest due July 1st, 1880, on bonds mentioned in within bill until hearing and order on complainant's motion for temporary injunction, as per prayer of bill.

Thereupon the said bill of complaint is read and examined, and the argument and suggestion of counsel are heard on said motion for a temporary stay order, and said motion is refused and said stay order denied, and it is ordered that the motion for an injunction, as per bill, be set down for hearing and argument at Mt. Ver-

non, Illinois, on Thursday, the 8th day of July, 1880, said motion to be heard and determined at chambers.

DAVID J. BAKER, *Judge.*

Application for injunction made at chambers in Mt. Vernon on the 8th day of July, 1880, and bill and exhibits read and examined and arguments of counsel on motion heard; and afterwards, on the 19th day of July, 1880, it is ordered that a temporary writ of injunction issue, as prayed for in bill.

DAVID J. BAKER,
Judge 1st Circuit.

Filed this 4th day of August, 1880.

R. H. FLANNIGAN,
Circuit Clk.

EXHIBIT "A."

SATURDAY, *July* 24, *A. D.* 1869.

At a special term of the county court began and held at the court house, in Benton, on Saturday, July 24th, A. D. 1869.

Present: Hon. W. E. Smith, county judge; James M. Akin and Isham Harrison, associate justices; C. M. Clark, county clerk, and William B. Denning, sheriff.

Court opened by proclamation, when the following order was made, to wit:

Be it ordered by the court that, by authority of an act of
47 the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville and Eldorado Railroad Company," approved February 22nd, A. D. 1861, and an act of the General Assembly, approved November 6th, A. D. 1849, authorizing counties to take stock in railroad companies, notice is hereby given that on Saturday, the eleventh day of September, A. D. 1869, in the various precincts in the county of Franklin and State of Illinois, at the usual voting places, an election will be held upon the question whether or not the county of Franklin shall subscribe the sum of two hundred thousand dollars ($200,000.00) to the capital stock of the Belleville and Eldorado Railroad Company, payable in county bonds at par, due in twenty years from date, with interest, payable semi-annually, at the rate of eight per cent. per annum, and to be of the denomination of not less than one thousand dollars each, said bonds to be issued upon the following conditions and not unless they are complied with:

1st. That the said railroad shall be located through Franklin county, running from Duquoin, in Perry county, to the town of Raleigh, in Saline county, within one-quarter of a mile of the court-house in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight house erected within said one-quarter of a mile of the court-house.

2nd. That said railroad shall be commenced in the county of Franklin within nine months from the date of said election and completed through the county by the 1st day of June, 1872.

3rd. That one hundred thousand dollars of said bonds, payable in said stock, shall be delivered to said company when said railroad is in running order to and a station located at Benton, and one hundred thousand dollars of said bonds to be delivered when the said railroad is completed and in running order through said
48 Franklin county.

4th. That there be not less than three stations located in the county—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Gallatia.

5th. That said election shall be opened at 8 o'clock in the morning and continue open until 6 o'clock in the afternoon, and shall be conducted by the judges of election appointed for the November election in 1868 if present; if not, judges may be chosen as at other elections.

6th. That persons voting at such election for subscription shall have written or printed on their tickets, "For subscription." Those voting against subscription shall have written or printed on their tickets, "Against subscription."

7th. And provided also, that said subscription shall receive a number of votes equal to a majority of all the votes cast in said county at the last general election of county officers.

EXHIBIT "B."

SATURDAY, *November 6th*, A. D. 1869.

County court met pursuant to adjournment.

Court opened by proclamation.

Among the proceedings the following were had, to wit:

Whereas in the various precincts in the county of Franklin and State of Illinois, at the usual voting places therein, on Saturday, September eleventh, A. D. 1869, an election was held, in pursuance of an order made at a special term of the Franklin county court began and held in the court-house, in Benton, on Saturday, the 24th day of July, A. D. 1869, upon the question whether or not the county of Franklin should subscribe the sum of two hundred thousand dollars to the capital stock of the Belleville and Eldorado Railroad Company, payable in county bonds at par, due twenty years from date, with interest, payable semi-annually, at the rate of eight
49 per cent. per annum, and to be of the denomination of not less than one thousand dollars each; and whereas at such election the qualified voters of said county did, by a majority of their votes (taking as a standard the number of votes cast for county officers at the last general election previous to the vote had upon the question of the subscription as aforesaid), authorize the county court of said Franklin county to subscribe the sum of two hundred thousand dollars to the capital stock of said Belleville & Eldorado Railroad Company: Therefore, at an adjourned term of the Franklin county court began and held at the court-house, in Benton, Friday, November the fifth, A. D. 1869—present, Hon. W. E. Smith, county judge; J. M. Aiken and Isham Harrison, associates; C. M.

Clark, county clerk, and Wm. B. Denning, sheriff—the following order was entered—that is to say:

It is considered and ordered by the court that by authority of the vote at the election aforesaid, held in the county of Franklin on the 11th day of September, A. D. 1869, and by authority of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville and Aldorado Railroad Company," approved February 22nd, A. D. 1861, and an act of the said General Assembly, approved November the 6th, A. D. 1849, authorizing counties to take stock in railroad companies, that the county of Franklin, in the State of Illinois, does hereby subscribe to the capital stock of the Belleville and Eldorado Railroad Company the sum of one hundred thousand dollars by virtue of the said act of the General Assembly of the State of Illinois entitled An act to incorporate the Belleville and Eldorado Railroad Company, approved February 22nd, A. D. 1861, and the further sum of one hundred thousand dollars by virtue of an act of the said General Assembly, approved November 6th, A. D. 1849, authorizing counties to take stock
50 in railroad companies, making a total two hundred thousand dollars hereby subscribed to the capital stock of the Belleville and Eldorado Railroad Company; that said capital stock subscribed as aforesaid be payable in the bonds of the county of Franklin, at par, said bonds to be due in twenty years after the date thereof, and to draw interest, payable semi-annually, at the rate of eight per cent. per annum; said bonds to be of the denomination of not less than one thousand dollars each. It is further ordered and considered by the court that said bonds are to be issued upon the following conditions, and never until they are complied with—that is to say:

1st. That said railroad shall be located through Franklin county, running from Duquoin, in Perry county, to the town of Raleigh, in Saline county, within one-*y*uarter of a mile from the court-house in the town of Benton, in the said Franklin county, and that a station be there located and a passenger and freight house erected within said quarter of a mile of the said court-house.

2d. That said railroad shall be commenced in the county of Franklin within nine months from the date of said election, and completed through the county by the 1st day of June, A. D. 1872.

3d. That one hundred thousand dollars of said bonds, payable on said stock, shall be delivered to said company when said railroad is in running order and the necessary cars running thereon from Duquoin or Eldorado to Benton and a station located at Benton, and one hundred thousand dollars of said bonds to be delivered when the said railroad is completed and in running order and the neces-
-ary rolling stock thereon through said Franklin county.

51 4th. That there be not less than three stations located in said county of Franklin—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Gallatia.

5th. That at the time said bonds are issued and stock received said railroad, its fixtures and rolling stock, are not — be mortgaged for more than the actual cash value of the same, and that there be

no mortgage or lien upon the same under which said road, its fixtures or rolling stock, can or may be exposed to sale within a shorter time than twenty-five years from date of such mortgage or lien.

EXHIBIT "C."

MONDAY, *February 6th, A. D.* 1871.

At a special meeting of the county court began and held at the court-house, at Benton, on Monday, February 6th, 1871.

Present: Hon. D. N. Browning, county judge; J. M. Akin and Gilbert G. Sweetin, associate justices; C. M. Clark, Co. clerk; Carroll More, sheriff.

Court opened by proclamation.

Whereas, by an order of this court made the 6th day of November, A. D. 1869, a subscription of two hundred thousand dollars was ordered to be made to the Belleville and Eldorado Railroad Company; and whereas said subscription required that the said railroad shall be commenced on the county of Franklin within nine months from the date of the election authorizing said subscription to be made, to wit, on the eleventh day of June, A. D. 1870, and completed through said county by the 1st day of June, A. D. 1872; and whereas the time for commencing said building has expired:

It is therefore ordered that the time for commencing and completing the said railroad be extended, and that the said subscription be made on the stock books of the Belleville and Eldorado Railroad Company upon the following terms and conditions, and not
52 until they are fully complied with.

That said two hundred thousand dollars subscribed to said capital stock as aforesaid be payable in the bonds of Franklin at par, said bonds to be due from the date thereof and to draw interest, payable semi-annually, at the rate of eight per cent. per annum, said bonds to be of the denomination of not less *of* one thousand dollars each; that said railroad shall be located through Franklin county, running from Duquoin, in Perry county, to the town of Raleigh, in Saline county, within one-quarter of a mile from the court-house, in the town of Benton, in said Franklin county, and that a station be there located and a passenger and a freight house be erected within the said quarter of a mile of the said court-house.

That said railroad shall be commenced in the county of Franklin on or before the first day of January, A. D. 1879, and completed through the county by the first day of January, A. D. 1874; that one hundred dollars of said bonds, payable on said stock, shall be delivered to said company when said railroad is in running order and the necessary cars propelled by steam running thereon from Duquoin or Eldorado to Benton as aforesaid and a station located at Benton, and one hundred thousand dollars of said bonds to be so delivered when the said railroad is completed *in and* running order and the necessary rolling stock thereon through said Franklin county; that there be not less than three stations located in the said

Franklin county—one at Benton, as aforesaid, one between Benton & Duquoin, and one between Benton and Gallatia.

Ordered that the court be now adjourned until court in ——.

D. M. BROWNING, *Judge.*
JAMES M. AKIN, *Associate.*
GILBERT G. SWEETIN, *Associate.*

53 EXHIBIT "D."

THURSDAY, *March 9th*, 1871.

Court met pursuant to adjournment.

Present: Same as yesterday.

Whereas an election held in Franklin county, in the State of Illinois, in strict accordance with law, on the 11th day of September, A. D. 1869, upon a proposition for Franklin county to subscribe two hundred thousand dollars to the capital stock of Belleville and Eldorado Railroad Company, a majority of the legal voters of the county voted for the said subscription: Now, therefore, the county of Franklin, of the State of Illinois, acting by the county and the associate judges of the Franklin county court and attested by the official seal of the said Franklin county, doth hereby subscribe the sum of two hundred thousand dollars for two thousand shares of the capital stock of the Belleville and Eldorado Railroad Company, said shares to be of the amount of one hundred dollars each.

Said stock is to be subscribed and the bonds to be issued upon the following conditions and not until they are fully complied with (to wit): Said stock is to be paid in Franklin county bonds at par, the bonds to be payable in twenty years after date, with interest at eight per cent. per annum, payable semi-annually in New York, the bonds to be of the denomination of one thousand dollars each, with coupons for the interest attacked thereto; the said county bonds to be delivered to said company as follows: One hundred thousand dollars of said bonds to be delivered when the section of railroad extending from the eastern bound-ry of Franklin county to Benton is completed in good running order and a train of cars propelled by steam shall have run over the same, and one hundred thousand dollars of said bonds to be delivered when the section of said railroad extending from Benton to the other *county* of Franklin county is com-
54 pleted and a train of cars propelled by steam shall have run over the same, it being left optional with the company which section of the railroad it will build first, and the bonds of the county *do* on either section of the road shall be delivered to said company when that section is completed and the cars shall have run over it to Benton as aforesaid. The said county bonds shall be valid and binding on the county from and after the delivery thereof to said company, and the faith of Franklin county is hereby pledged for the payment of the bonds issued to said Belleville and Eldorado Railroad Company, and the said railroad to be commenced within the county in one year and completed through the county within three years from the date of this subscription.

It is further provided that (said) railroad company shall erect a passenger and freight depot on said road at Benton, within one-quarter of a mile of the present court-house, and at least one other freight and passenger depot on said road between Benton and each of the county lines in Franklin county through which the road shall run. It is further provided that this subscription and those previously made shall not be construed as intending to subscribe more than two hundred thousand dollars to said Belleville and Eldorado Railroad Company or to any company or companies that may build railroads with- said county.

Witness the signature of the judges of the county court of Franklin county, Illinois, and the seal of said court, this 9th day of March, A. D. 1871.

DANIEL M. BROWNING, [SEAL.]
County Judge.
JAMES M. AKIN, [SEAL.]
Associate Judge.
GILBERT G. SWEETIN, [SEAL.]
Associate Judge.

55 EXHIBIT "E."

Supervisors' Meeting.

Dec. Term, December 13th, 1876.

Court met pursuant to adjournment and opened by proclamation.

Present: James M. Bayfield, chairman; William Flatt, Silas Kirkpatrick, Elmuel Day, Carrol Moore, J. W. Williams, M. C. Ingram, N. B. Tyrell, and J. M. Weir, members; James M. Akin sheriff.

Attest: EVAN FITZGERRELL, *Co. Clerk.*

Among other proceedings the following were had, to wit:

On motion, the following order was adopted, to wit:

Whereas in the various precincts of the county of Franklin and State of Illinois, at the usual voting places therein, on Saturday, September the 11th, A. D. 1869, and election was held in pursuance of an order made at a special term of the county court of Franklin county, began and held at the court-house, in Benton, on Saturday, the 24th day of July, A. D. 1869, upon the question whether or not the county of Franklin should subscribe the sum of two hundred dollars to the capital stock of the Belleville and Eldorado Railroad Company, payable in county bonds at par, due twenty years from date, with the privilege of paying after five years, with interest, payable semi-annually, at the rate of eight per cent. per annum, and to be of the denomination of not less than one thousand dollars each; and whereas at such election the qualified voters of said county did, by majority of the votes, taking as a standard the number of votes cast for county officials at the last general election previous to the vote had upon the question of subscription as aforesaid, authorize the county court of said Franklin county to subscribe the sum of two hundred thousand dollars to the capital stock of said Belleville

and Eldorado Railroad Company: Therefore, at a regular
56 meeting of the board of supervisors of Franklin county, began and held at the court-house, in the town of Benton, in the county of Franklin and State of Illinois, on Wednesday, 13th day of December, A. D. 1876—

Present: James M. Bayfield, chairman; William Flatt, S. P. Kirkpatrick, L. Day, C. Moore, M. C. Ingram, M. B. Tyrell, J. M. Weir, and J. W. Williams, members of the board of supervisors, with Evan Fitzgerrell, county clerk, and James M. Akin, sheriff—

The following order was entered—that is to say: It is considered and ordered by the board of supervisors of said county, by the authority of the vote heretofore mentioned and the authority of an act of the General Assembly of the State of Illinois, entitled "An act to incorporate the Belleville and Eldorado Railroad Company," approved February 22nd, A. D. 1861, and an act of the General Assembly approved November 6th, A. D. 1849, authorizing counties to take stock in railroad companies—

That the county of Franklin, in the State of Illinois, does hereby subscribe to the capital stock of the Belleville and Eldorado Railroad Company the sum of one hundred and fifty thousand dollars, being seventy-five thousand dollars by virtue of each of the acts of the General Assembly herein mentioned; that said capital stock so subscribed as aforesaid be payable in the bonds of Franklin county aforesaid at par; said bonds to be due in twenty years and be paid after the expiration of five years from their date, at the option of the countys; aid bonds as aforesaid to draw interest at the rate of eight per cent. per annum, interest payable semi-annually, and to be of the denomination of not less than one thousand dollars each. It is further ordered by the board of supervisors that the said bonds be issued and placed in the hands of a trustee, to be paid out upon the following conditions:

57 1st. That said railroad shall be located through Franklin county, running from the junction of said road near the west line of Saline county, Illinois, to Duquoin, Perry county, Illinois, and within one-fourth of a mile of the court-house, in the town of Benton, in said Franklin county, and that a station be there located, and a passenger and freight depot be there located within said one-fourth of a mile of said court-house.

2nd. That said railroad shall be commenced within thirty days from the date of this order and completed by the 15th day of October, A. D. 1877.

3rd. That seventy-five thousand dollars of said bonds be applied to the building of the road from said junction in Saline county, and seventy-five thousand dollars be applied to the building of the road from Benton to Duquoin, to be delivered and paid to the contractors as each mile of the road is completed under the contract in proportion to the whole number of miles in each division built, and provided that the whole contract of building is to include the building of the whole road from Saline county to Duquoin.

4th. That there be not less than three stations located in said

county of Franklin—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Saline county line.

EXHIBIT "F."

NOVEMBER 12TH, A. D. 1877.

On this day the board of supervisors of Franklin county met at the court-house, at Benton, in said county.

Present: John J. St. Clair, chairman; L. Day, James K. Marison, James M. Bayfield, Joseph M. Weir, S. P. Kirkpatrick, L. D. Walker, and Jesse Taylor.

58 Attest: EVAN FITZGERRELL,
County Clerk.
J. M. AKIN, *Sheriff.*

Among other proceedings the following were had, to wit: It is therefore considered and ordered by the board of supervisors of Franklin county, in the State of Illinois, that the order of said board made on the 13th day of December, A. D. 1876, subscribing $150,000.00 to the capital stock of the Belleville and Eldorado Railroad Company be, and the same is hereby, amended as follows, to wit: That said order subscribing said stock read as follows, to wit: That the county of Franklin, in the State of Illinois, under the provisions of an act of General Assembly of the State of Illinois entitled An act to incorporate the Belleville and Eldorado Railroad Company, approved February 22nd, A. D. 1861, authorizing subscription to the capital stock of said railroad, and in accordance with the majority of votes cast at an election held in said Franklin county, in conformity with said act, on the 11th day of September, A. D. 1869, does hereby subscribe the sum of one hundred thousand dollars to the capital stock of the Belleville and Eldorado Railroad Company, payable on bonds of said Franklin county at par; said bonds to be due in twenty years after date thereof, and payable at the option of said Franklin county after five years; said bonds to bear interest from date, at the rate of eight per cent. per annum, payable semi-annually; said bonds to be of the denomination of one thousand dollars each; and that the county of Franklin, in the State of Illinois, under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to authorize cities and counties to subscribe stock to the railroad," approved November 6th, 1849, and under authority, evidenced by majority of the qualified voters of said Frank-
59 lin county, at an election held in said county, in conformity with the provisions of said act, on the 11th day of September, A. D. 1869, does hereby subscribe the sum of fifty thousand dollars to the capital stock of the Belleville and Eldorado Railroad Company, payable in bonds of said Franklin county at par; said bonds to be due twenty years after the date thereof, and payable at the option of said Franklin county after five years; said bonds to bear interest from date, at the rate of eight per cent. per annum, payable semi-annually; said bonds to be of the denomination of one thousand dollars each.

It is therefore considered and ordered by the board of supervisors of Franklin county, in the State of Illinois, that the chairman of the board of supervisors of said Franklin county and the clerk thereof are hereby ordered and directed to execute bonds of said Franklin county in payment of said amended subscription to said capital stock of the Belleville and Eldorado Railroad Company as follows, to wit: That said chairman and said clerk execute one hundred bonds of said Franklin county of the denomination of one thousand dollars each, payable to the Belleville and Eldorado Railroad Company or bearer twenty years after the date thereof, and payable at any time after five years and before said bonds become due, at the option of said Franklin county, with interest thereon from the date thereof, at the rate of eight per cent. per annum, payable semi-annually on the first of January and July of each year; said bonds and the interest thereon to be made payable in the city and State of New York, at the place where the treasurer of the State of Illinois pays the interest and debt of said State; said bonds to be executed in conformity with and under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to incorporate
60 the Belleville and Eldorado Railroad Company," approved February 22nd, A. D. 1861, authorizing subscriptions to the capital stock of said railroad company, and in accordance with the majority of votes cast at an election held in said county, in conformity with the provisions of said act, on the 11th day of September, A. D. 1869.

It is further ordered by said board of supervisors of said Franklin county that the chairman of said board of supervisors and the clerk are hereby ordered and directed to execute bonds of said Franklin county in payment of said amended subscription to the capital stock of the Belleville and Eldorado Railroad Company as follows, to wit: that said chairman and said clerk execute fifty bonds of said Franklin county of the denomination of one thousand dollars each, payable to the Belleville and Eldorado Railroad Company or bearer twenty years after the date thereof, and payable at any time after five years and before said bonds become due, at the option of said Franklin county, with interest thereon from the date thereof at the rate of eight per cent. per annum, payable semi-annually on the first day of January and July of each year; said bonds and the interest thereon to be made payable in the city and State of New York, at the place where the treasurer of the State of Illinois pays the interest and debt of said State.

Said bonds to be executed in conformity with and under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to authorize cities and counties to subscribe stock to railroads," approved November 6th, A. D. 1849, as authorized by a majority of the qualified voters held in said county, in accordance with the provisions of said act, on the 11th day of September, A. D. 1869.

61 It is further ordered by the board of supervisors of said Franklin county that the clerk of said board make a record of said bonds and coupons thereto attached as required by law. It

is further considered and ordered by the board of supervisors that John J. St. Clair, chairman, and Joseph M. Weir, member of said board, are hereby appointed commissioners in behalf of said Franklin county, and said commissioners are hereby ordered and directed to safely convey said bonds above described, when executed, to the city of Evansville and deposit the same with the Evansville National bank, trustee as aforesaid, and take receipt therefore; said commissioners are further ordered and directed to receive from said trustee, in exchange for said bonds so deposited by them, the afore-mentioned 150 bonds of said Franklin county, executed, as aforesaid, on the 22nd day of December, A. D. 1876, and deliver the same to said board of supervisors or its committee appointed to cancel and destroy the same.

It is further ordered by the board of supervisors of said Franklin county that said Evansville National bank, trustee as aforesaid, received said bonds to be executed, pursuant to the order of said board of supervisors, at the special November term, A. D. 1877, and that said trustee hold said bonds and deliver the same to said railroad company only on the same conditions and under the same restrictions as specified in the order of said board of supervisors made, as aforesaid, on the 13th day of December, A. D. 1876.

EXHIBIT "G."

Resolved by the board of supervisors of Franklin county, that we hereby extend to the board of directors of the Belleville and Eldorado Railroad Company further time for the building of said railroad until the 15th day of September, 1878.

62 March 5th, 1878.

J. M. WEIR.

Motion and second- that the above resolution be amended so as — read first day of May, instead — fifteenth day of September, 1878.

Vote *of* the adoption of amendment stood:

Yeas—Bayfield, Taylor, Williams, and Kirkpatrick.

Nays—Weir, Walker, Day, Manion, and St. Clair.

Vote on the adoption of the resolution extending the time to the board of directors for the construction of the Belleville and Eldorado Railroad Company stood:

Yeas—Weir, Walker, Day, Manion, and St. Clair.

Nays—Bayfield, Taylor, Williams, and Kirkpatrick.

EXHIBIT "H."

MONDAY, *July 22nd*, 1878.

The board of supervisors of Franklin county, Illinois, met in Benton on Monday, July 22nd, 1878.

Present: James M. Bayfield, chairman; Isham Harrison, Silas P. Kirkpatrick, Thomas Neal, John J. St. Clair, John W. Williams, Jesse Taylor, James K. Manion, and C. C. Biggs, members.

Attest: CHAS. A. AKIN,
County Clerk.
JAMES M. AKIN, *Sheriff.*

Court opened by proclamation, when the following proceedings, among other things, were had, to wit:

On motion of Isham Harrison, the following resolutions were adopted by the board:

Whereas one hundred and fifty of the railroad bonds of Franklin county, as bonds of this county which were designed to be paid upon certain conditions to the Belleville and Eldorado Railroad Company for stock, for the sum of one thousand dollars
63 each, were deposited with the Evansville National bank, Evansville, Indiana, as trustee, by the supervisors of said county, under and by virtue of an order of said board of supervisors made at the November special meeting thereof, A. D. 1877; and whereas there is doubt of the legality of placing said bonds out of the immediate custody and possession of this board: Therefore it is ordered by the said board of supervisors of said county that Charles A. Akin, county clerk of said county, be, and he is hereby, appointed agent and commissioner for and on behalf of said county to proceed to Evansville, Indiana, at once and for and on behalf of Franklin county demand and receive said bonds from said bank, and receipt for the same, and pay said bank all reasonable charges for keeping said bonds, and that said Charles A. Aiken keep and retain the possession of said bonds for and on behalf of this board of supervisors until otherwise directed by this board or the successors thereof, and that said Charles A. Akin report to this board at its next meeting of his acts and doings under this order.

Dated this 22nd day of July, A. D. 1878.

ISHAM HARRISON, *Mover.*

And now comes Isham Harrison and presents the following resolution, which is adopted by the board, as follows:

EXHIBIT "I."

STATE OF ILLINOIS, } ss:
Franklin County, }

To the board of supervisors of Franklin county, Illinois:

The undersigned, county judge of Franklin county, Illinois, would respectfully report, in accordance with your resolution of this day, that under the contract made by your board subscribing stock to the Belleville and Eldorado Railroad Company, I have
64 given order to James Hill & Company for the Franklin county bonds as each mile of railroad was built from Saline county, Illinois, to Benton, and under said orders James Hill & Co. have drawn from the Evansville National bank, as trustee, ($75,000) in Franklin county bonds, being bonds from number one to seventy-five, inclusive, issued under act of February 22nd, A. D. 1861, incorporating the Belleville & Eldorado Railroad Company.

The Evansville National bank as trustee holds, subject to the order of the board of supervisors of this county, $75,000 in certificates of stock issued by said railroad company to Franklin county,

Illinois. There had been one-half of the stock certificates deposited under the subscription made by your honorable body.

Respectfully submitted, D. M. BROWNING.

SEPTEMBER 16TH, 1878.

And now comes James Hill & Co. and submit a proposition asking for an extension of the time for completing the Belleville & Eldorado railroad as follows, to wit:

EXHIBIT "K."

STATE OF ILLINOIS, } ss:
Franklin County, }

To the honorable board of supervisors of Franklin county, Illinois:

The Belleville & Eldorado Railroad Company respectfully represents unto your honorable body that, in pursuance to the contract heretofore made with this honorable board, James Hill & Company, the contractors for the construction of said railroad from the east line of said county of Duquoin, in Perry county, Illinois, have completed said railroad to the main street leading south from the
65 court-house in Benton and within one-fourth of a mile of said court-house, and that trains of cars have been propelled over said road by steam; that the time allowed by the order of your honorable body for the completion of said railroad expired on the 15th instant; that no further extension of said road can be made without the friendly co-operation of your honorable body in extending the time to said company and contractors for the completion of said road. Said company feel warranted in stating that if a reasonable time be fixed upon your honorable body that the work will at once progress on said road; but owing to the fact that the winter season is rapidly approaching, in which the work may be necessarily delayed in consequence of unfavorable weather, the said company feel constrained to ask for an extension of one year from this date. If, however, your honorable body should feel disinclined to act in the premises at this time so as to insure the success of the enterprise, your petitioners respectfully ask that you adjourn without acting for such time as will enable each of your honorable body to consult his constituents on the subject of an extension of time.

F. M. YOUNGBLOOD,
Solicitor for Belleville & Eldorado Railroad Company.

The following resolution was presented by Isham Harrison and adopted by the board, to wit:

EXHIBIT "L."

STATE OF ILLINOIS, } ss:
Franklin County, }

To the chairman and board of supervisors of Franklin county, Illinois:

Whereas there are one hundred and fifty bonds of the denomination of one thousand dollars each issued in *air* of the Belle-
66 ville and Eldorado Railroad Company for the construction of a railroad through the county of Franklin and State of Illinois, at the special November term, A. D. 1876, with the express understanding that said road was to be completed through the said county of Duquoin, in Perry county, Illinois, by the fifteenth day of March, 1878; and whereas said railroad company failed upon their part to complete said road ac-ording to the contract above mentioned; and whereas the county board of said county did, at the March term, A. D. 1878, extend the time for the completion of said road to the said company until the 15th day of September, A. D. 1878; and whereas the said railroad company failed to complete said road according to the contract last above mentioned: Therefore be it resolved by the county board of said Franklin county, at a special meeting held for county business on the 16th day of September, A. D. 1878, that we do hereby declare the said contract at an end, and that we do authorize and request the First National Bank of Evansville, Indiana, to transmit by express to Duquoin, Illinois, all the bonds and certificates of stock in said railroad that may be in possession of said bank to Charles A. Akin, who is commissioner and agent on behalf of the people of said Franklin county; and the said Charles A. Akin is hereby authorized to keep said bonds for the further action of the said county board.

EXHIBIT "M."

The board of supervisors of Franklin county, Illinois, met in Benton on Monday, October the 21st, A. D. 1878.

Present: James M. Bayfield, chairman; Isham Harrison, Silas P. Kirkpatrick, Thomas Neal, John J. St. Clair, John W. Williams, Jesse Taylor, James K. Manion, and C. C. Biggs.

Attest: CHAS. A. AKIN, *County Clerk.*
JAMES M. AKIN, *Sheriff.*

67 Court opened by proclamation, when, among others, the following proceedings were had, to wit:

Resolved by the board of supervisors of Franklin county in special meeting assembled, That the time for the completion of the said Belleville and Eldorado railroad from Benton to Duquoin be extended to said company and contractors until the first day of November, A. D. 1879; and be it further ordered by said board of supervisors that said Evansville National bank as aforesaid be, and is hereby, ordered to pay over to said railroad company the bonds of

said company now in its hands as soon as the railroad is completed to Duquoin, as provided in said original contract.

JOHN ST. CLAIR, *Mover.*

And now comes Samuel F. Benton, a member of this board, who offers the following resolution, which is adopted of record as follows:

Resolved by the board of supervisors of Franklin county, That the suit now pending in the circuit court of Franklin county, in which The County of Franklin is complainant and The Belleville & Eldorado Company and others are defendants, it being a bill in chancery to enjoin the delivery of the bonds of said county, now in the hands of the Evansville National bank as trustee, to the Belleville & Eldorado Railroad Company, under its contract with said company as said railroad shall be completed to Duquoin, be dismissed and discontinued, and that said bonds be delivered in strict compliance with the contract made with the said county and the said railroad company and its contractors.

And be it further resolved by the board of supervisors, That John J. St. Clair, hereafter as said railroad progresses from Benton to Duquoin, examine and receive said road under said contract
68 as therein provided for the county judge of said county to do, and give orders to the trustee for said bonds, and that the trustee hereafter deliver said bonds on the order of the said John J. St. Clair showing that said railroad has been completed as provided in said contract. And be it further resolved, that on delivery of said bonds or any part thereof, on the order of the said John J. St. Clair, the chairman of this board is hereby directed to attach his certificate registration to each of said bonds.

And be it further resolved, That all resolutions of this board heretofore passed on this subject inconsistent herewith be, and the same are hereby, repealed and revoked.

And it is further resolved, That F. M. Youngblood be, and is hereby, authorized and empowered to take such legal steps as may be necessary to have said suit above mentioned dismissed and discontinued.

S. F. BUNTIN, *Mover.*

Exhibit "N."

By request the yeas and nays are called for on adoption on above resolution, which showed the following vote:

Yeas—John J. St. Clair, Joseph Hammons, S. F. Buntin, John G. Bowling.

Nays—Jesse Taylor, J. W. Williams, J. M. Darr, James Martin.

There being a tie vote, the chairman voted in affirmative.

STATE OF ILLINOIS, } ss:
Franklin County, }

I, Chas. A. Akin, clerk of the county court in and for the county of Franklin and State of Illinois, do hereby certify that the
69 foregoing exhibits from "A" to "N," inclusive, pertaining to the subscription of stock by the county of Franklin to the Belle-

ville & Eldorado Railroad Company, are true and perfect copies of the orders of the county court and the board of supervisors of Franklin county, Illinois, relative to said subject as the same remain of record now in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of said court this 17th day of June, A. D. 1880.

[SEAL.] CHAS. A. AKIN,
County Clerk.

Indorced: Filed Aug. 4th, 1880. R. H. Flannigan, circuit clerk.

Copy of Bond.

UNITED STATES OF AMERICA, *State of Illinois:*

No. 50. $1,000.

Franklin County Eight per cent. Railroad Bond.

Know all men by these presents, that the county of Franklin, in the State of Illinois, acknowledges itself to be endebted to the Belleville & Eldorado Railroad Company, or bearer in the sum of one thousand dollars, which sum the said county for value received, promises to pay said company or bearer, in the city and State of New York, twenty years after date, payable at any time after five years, and before this bond becomes due, at the option of said county of Franklin, with interest thereon from and after the 15th day of November A. D. 1877, at the rate *at* eight per cent. per annum, payable semi-annually, on the first day of January and July of each year, on the presentation and surrender, at the place in said city of New York where the treasurer of the State of Illinois pays the interest and debt of said State, of the coupon*d*s hereto attached, as they severally became due.

70 This bond is one of a series of fifty of like tenor for the sum of one thousand dollars each, numbered from one to fifty, inclusive, issued under the general provisions of — the General Assembly of the State of Illinois, entitled "An act to authorize cities and counties to subscribe stock to railroads," approved November the 6th, A. D. 1849, and authorized by a majority of the qualified voters of Franklin county, at an election held in said county on the 11th day of September, A. D. 1869, in accordance with the provisions of said act.

In testimony whereof the said county of Franklin has executed this bond, by the chairman of the board of supervisors, under the order of the board of supervisors of said county, signing his name hereto, and by the clerk of said board, under the order thereof, attesting the same and affixing hereto the seal of said county.

This done at the office of the clerk of said board, this 13th day of November, A. D. 1877.

JOHN J. ST. CLAIR,
Chairman of the Board of Supervisors of Franklin County, Illinois. [SEAL.]

EVANS FITZGERRELL,
Clerk of the Board of Supervisors, Franklin County, Illinois.

(Across the face in red ink:) $1,000.

B. E. Railroad Mortgage.

This indenture, made this the 13th day of October, A. D. 1877, between the Belleville and Eldorado Railroad Company, a corporation created by the State of Illinois, party of the first part, and the Farmers' Loan and Trust Company of the City and State of New York, party of the second part, witnesseth:

That whereas the party of the first part is the owner and now in the actual possession and control of said line of railroad now being constructed by said party of the first part; and whereas said party of the first part is authorized by law to borrow any sum or
71 sums of money which may be necessary for the purpose of building, completing, equipping, operating, and maintaining its railroad and to mortgage or convey by deed of trust its corporate property and franchises which it may now have or may hereafter acquire to secure the payment of any debt contracted by the party of the first part;

And whereas the said party of the first part have, by a resolution of the board of directors, duly authorized its president and secretary to execute in the corporate name of the company and issue bonds to be designated first-mortgage bonds, series "A," to be secured by a deed of trust on the whole line of railroad (except fifteen miles hereinafter described), in the form hereinafter set forth, to aid in securing the necessary means to build, complete, equip, maintain, and operate said railroad to the amount of ten thousand dollars per mile on each and every mile except the fifteen miles above mentioned, not exceeding in the aggregate the sum of three hundred and fifty thousand dollars, thre- hundred of which bonds to be of the denomination of one thousand dollars each, and numbered consecutively from one to three hundred (300) inclusive, and one hundred of which shall be of the denomination of five hundred dollars each and numbered consecutively from three hundred and one (301) to four hundred, inclusive, and that shall be payable to the Farmers' Loan and Trust Company of the City and State of New York on the 1st day of January, A. D. 1908, in gold coin of the United States, with interest thereon at the rate of six per centum per annum, payable semi-annually in gold at the office of the said Farmers' Loan and Trust Company in the city of New York, or such place in the city of New York as said company may appoint, and give in ten — notice of by publication in some newspaper of that city on the 1st day of July and January of each and every year ensuing the date of said bonds, interest commencing
72 January 1st, A. D. 1878. All of said bonds shall be deemed equally secured by this indenture without preference one over another, notwithstanding the same may be issued at different times, and they shall be authenticated by a certificate signed by the party of the second part in the trust hereby created, viz:

Form of Bond.

UNITED STATES OF AMERICA, *State of Illinois.*

$1,000. No. —. Series A. $1,000.

Interest at six per cent. in gold coin, payable semi-annually.

The Belleville and Eldorado Railroad Company First-Mortgage Bond.

Know all men by these presents, that the Belleville and Eldorado Railroad Company, a corporation created by the State of Illinois, and duly organized under the laws of said State, is indebted to the Farmers' Loan and Trust Company of the City and State of New York in the sum of one thousand dollars in gold coin of the United States, which the said company promises to pay to the said Farmers' Loan and Trust Company, or the registered holder hereof, or, if not registered, to the bearer, on the 1st day of January, A. D. 1908, together with interest from and after January 1st 1878, at the rate of six per cent. per annum, in gold, at the office of the Farmers' Loan and Trust Company, of the city of New York, or at such place in the city of New York as said company may appoint and give ten days' notice of by publication *of* some newspaper of the city of New York on the first day of July and January of each year on the presentation and surrender of the annexed interest coupon- as they severally become due, as herein provided. This bond is one of a series marked "A" limited to ten thousand dollars per mile upon said company's railroad extending from Eldorado in Saline county Illinois, via Raleigh, Galatia, and Benton, to Duquoin, in Perry county, Illinois, and all of even date herewith, secured by deed of trust of said railroad company to the Farmers' Loan and Trust Com-
73 pany of the City of New York and conveying to said trustee all the railroad, rolling stock, franchises, and property now owned by said company or hereafter acquired by it, excepting fifteen miles of said railroad commencing at Eldorado, in Saline county, Illinois, and extending westward fifteen miles in said Saline county Illinois.

It is hereby expressly agreed by the said railroad company with the holders of this bond that in case of non-payment of any interest coupons thereto attached, if said default shall continue for six months after maturity and demand of payment, then in that case the principal of this bond shall become due and shall be payable in the manner provided in the deed of trust, and the company hereby waives the benefit of every extension, stay, or appraisement law which has been or may hereafter be enacted. This bond shall pass by delivery or transfer on the books of the company in the city of New York, or at such other places as said company may hereafter appoint, after registration of ownership certified hereon by the treasurer of the company or its transfer agent. No transfer, except on the books of the company, shall be valid unless the last transfer be to bearer, which shall restore transferability by delivery, and it shall continue subject to successive registration and transfer to bearer as aforesaid at the option of the holder. This bond shall

not be valid unless the certificate endorsed hereon is signed by the trustee.

In testimony whereof the said company have caused their corporate seal to be hereto affixed and these presents to be signed by their president and countersigned by their secretary on this — day of ——, A. D. 1877.

Form of Coupon.

$30. $30.

On the first day of July, 1878, the Belleville and Eldorado
74 Railroad Company will pay at the office of the Farmers' Loan and Trust Company, in the city of New York, or at such a place in the city of New York as said company may appoint, and give ten days' notice of by publication in some newspaper of the city, on the surrender of this coupon to bearer, or, if registered, to the registered holder thereof, on order, the sum of thirty dollars in gold, being six months due that day on bond No. —, series "A," No. —.

—— ——, *Treasurer.*

Trustees' Certificate.

The undersigned, president of the Farmers' Loan and Trust Company of the City of New York, hereby certifies that this is one of the bonds issued under the within-mentioned deed of trust, and that said deed of trust has been duly recorded in each of the counties in the State of Illinois in which said railroad is located.

—— ——, *President.*

The other denomination of bond of this series mentioned above, together with the coupons and trustees' certificates, is in form the same as above in every particular except as to amount, which in the bond is five hundred dollars and in the coupon fifteen dollars.

And whereas said board of directors have passed a resolution in due form, authorizing the president and secretary of said railroad company to execute in their corporate name, and to affix thereto there corporate seal, a deed of trust to the Farmers' Loan and Trust Company of the City and State of New York, as trustee, to secure the payment of the principal and interest of said bonds:

Now, therefore, this indenture witnesseth, further, that the Belleville and Eldorado Railroad Company, in order to secure the payment of said bonds and interest, and in consideration of one dollar to them at the time of sealing and delivery hereof in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do hereby grant, bargain, sell,
75 transfer, and convey to the said party of the second part, their successors and assigns in the trust hereby created, the said line of railroad of the party of the first part, commencing at Eldorado, in Saline county, Illinois, and running thence westerly to Raleigh and Galatia, in said Saline county, thence to Benton, in

Franklin county, and thence to Duquoin, in Perry county, State of Illinois, with the lands, depots, grounds, ways, rights of ways, station-houses, machine and all other shops, and houses, and buildings, structures, and road-beds, tracks, sidings, cars, engines, tenders, rolling stock and machinery, tools, implements, fuel, material, and property, both real and personal, and all rights, credits, income, and earnings, profits, choses in action, and franchises of the party of the first part, connected with or appertaining to said line of *rial*road, intending hereby to include all the property now belonging to or which may hereafter be acquired by the party of the first part, as connected with or appertaining to said line of railroad, now constructed *ot* to be constructed, equipped, and operated, and all rights, privileges, and appertenances thereunto belonging, to have and to hold the same and every part thereof to the said party of the second part, their successors and assigns, for the uses and purposes herein expressed, excepting and excluding, however, from this deed of trust so much of said railroad as has been heretofore mortgaged by the party of the first —, viz., fifteen miles lying and being in Saline county, of Illinois, commencing at Eldorado, of said county of Saline, thence westward a distance of fifteen miles.

Article 1. Until default shall have been made by the party of the first part in the performance of all and singular the covenants and agreements of this indenture, and of the bonds herein mentioned, said party of the first part shall be permitted and to have and retain the exc*ul*sive control, possession, and enjoyment of the
76 *of the* premises hereby conveyed in the same manner and with the same effect as if the said indenture had not been made.

Article 2. In case of default in payment of the principal or interest of said bonds or any part thereof when the same shall have become due, according to the tenor and effect of said bonds and of the coupons attached thereto, or in any of the requirements to be done or kept by the party of the first part, it shall be lawful for the party of the second part, their successors or assigns, after six months from such default and upon a request of a majority in interest of the holders of said bonds, personally or by their agents, to take possession of and manage said railroad and property and receive the income therefrom, and, after defraying all the expenses of the road and of its needful completion, repairs, and all payments for taxes, together with a just compensation for their services, to apply the surplus of money so received to the payment of said bonds and the interest thereon ratably and without discrimination or preference; or the said party of the second part and their successors or assigns in the trust are hereby authorized and required, upon a written request of a majority in interest of the holders of said bonds, after such six months' default, to cause said premises to be sold at public auction in the city of New York, giving at least forty days' notice of the time and place of such sale and of the specific property to be sold, by publishing the same in two newspapers published in said city and one newspaper published in each of the counties of said State through which said road is located, and to execute to the

purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which sale and conveyance shall be a perpetual bar against the party of the first part, their successors or assigns, and all persons claiming under them, of all right, interest, or claim, whether legal or equitable, in or to said premises or any part thereof; and the said trustee, its successors or assigns, shall, after deducting from the proceeds of such sale the costs and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest on said bonds, and shall restore the residue thereof to the party of the first part, it being expressly understood that in no case shall any claim or advantage be taken of valuation, appraisement, or extension laws by the party of the first part to prevent such entry or sale as aforesaid.

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Article 3. And it is further covenanted on the part of the party of the first part, their successors or assigns, that the proceeds of said bonds shall be applied in good faith to the construction and equipment of said railroad and the putting and continuing the same in operation.

And the said party of the first part further covenants with the said party of the second part, and their successors and assigns in said trust, to make, execute, and deliver all and singular such further assurance and instruments as shall from time to time be necessary and as the said trustee or its counsel shall reasonably advise or require for the better assuring and securing the said trustee, its successors and assigns, in the trust hereby created in the said railroad property, appurtenances, and effects hereby mortgaged or intended so to be.

Article 4. And it is hereby mutually agreed, and these presents are upon this express condition, that upon payment of the principal and interest of said bonds the estate hereby granted to the said party of the second part shall be void, without any acknowledgement of satisfaction, conveyance, re-entry, or other act; but said party of the second part, their successors or assigns, shall, if so requested thereto by the party of the first part, their successors or assigns, reconvey, release, or quitclaim to the said party of the first part, their successors or assigns, at the cost of the last-named party, all and singular the premises hereinbefore mentioned.

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Article 5. And it is also further mutually agreed that the said party of the second part, their successors or assigns in said trust, shall be entitled to receive proper compensation for any labor or services performed by them in discharge of this trust in case they shall be compelled to take possession of said premises and manage the same, and the said trustee, its successors or assigns, party of the second part, shall not in any manner be responsible for any default or misconduct of agents of them employed, but shall exercise a reasonable care in the selection and appointment of such agents.

In evidence whereof the party of the first part have hereunto set their corporate seal, and the party of the second part have also affixed their signature and seal, for the purposes of evidencing the ac-

ceptance of the trust hereby created, on the day and year first above written.

BELLEVILLE AND ELDORADO RAILROAD CO.,
Attest: By PHILIP D. B. GRATTAN, *President.*
[SEAL.] BOEN PHILLIPS, *Secretary.*

THE FARMERS' LOAN AND TRUST COMPANY,
Attest: By R. G. ROLSTON, *President.*
[SEAL.] GEO. P. LESLIE, *Secretary.*

STATE OF ILLINOIS, }
Saline County. }

I, John F. Latham, notary public in and for said county and State aforesaid, do hereby certify that Phillips D. B. Grattan, who is personally known to me to be the real person he represents himself to be, this day personally appeared before me and acknowledged that he signed, sealed, and delivered the foregoing instrument of mortgage in his official capacity for the uses and purposes therein set forth.

79 Given under my hand and seal this November 15th, A. D. 1877.

[SEAL.] JOHN F. LATHAM, *N. P.*

STATE OF NEW YORK, }
City and County of New York. }

On this 13th day of November, 1877, before me personally appeared R. G. Rolston, the president of the Farmers' Loan and Trust Company of the City of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of New York; that he knew the corporate seal of said corporation; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the board of directors of said corporation, and that he signed his name thereto as president by the like authority.

In witness whereof I have hereunto affixed my seal and signed my name the day and date last above written.

W. D. SEARLS,
No. 14. [SEAL.] *Notary Public, New York Co.*

STATE OF NEW YORK, }
City and County of New York. }

I, Henry A. Gumbleton, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that W. D. Searls, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof of acknowledgment a notary public in and for the city and county of New York, dwelling in said

city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 13th of November, 1877.

80 [SEAL.] HENRY A. GUMBLETON, *Clerk.*

Filed in my office for record on the 6th day of February, A. D. 1878, and duly record-.

R. H. FLANNIGAN, *Recorder.*

EXHIBIT "P."

STATE OF ILLINOIS, }
County of Franklin. }

I, R. H. Flannigan, circuit clerk and recorder in and for said county and State aforesaid, do hereby certify that the foregoing is a true copy of the record of an instrument recorded in my office, in book "F" of Mortgages, on page- 24 to 34, inclusive.

Witness my hand and official seal this 17th day of May, A. D. 1879.

R. H. FLANNIGAN,
[SEAL.] *Circuit Cl'k and Recorder.*

Indorsed: Filed August 4, 1880. R. H. Flannigan, cir. cl'k.

STATE OF ILLINOIS, }
Franklin County. }

John S. Smith, being by me first duly sworn, on his oath states that on the 30th day of June, A. D. 1880, he mailed notices, of which the annexed is a true copy, to the following-named persons, at the post offices, as follows, to wit: W. H. Nye, Rockville, Indiana; James M. Warren, Evansville, Indiana; J. C. Smith, State treasurer, Springfield, Illinois; James Hill, Arkansas City, Kansas; E. F. Leonard, pres't B. & E. R. R. Co., Springfield, Illinois; T. B. Needles, auditor, Springfield, Illinois; W. Bayard Cutting, New York city, N. Y.

JOHN S. SMITH.

Subscribed and sworn to before me this 30th day of June, 1880.
[SEAL.] R. H. FLANNIGAN, *Cir. Cl'k.*

STATE OF ILLINOIS, }
Franklin County. }

Thomas J. Layman, being duly sworn, on his oath states that he has made diligent inquiry to learn the post-office address of each of the persons named in the above and foregoing affidavit of John S.

Smith, and that the post-office address of each of said parties
81 is correctly stated in said affidavit, as he is informed and believes.

THOS. J. LAYMAN.

Subscribed and sworn to before me this 1st day of June, A. D. 1880.

R. H. FLANNIGAN,
Per JOHN S. SMITH, *Deputy.*

Bill in chancery for injunction and relief.

STATE OF ILLINOIS, }
Franklin County. }

In the Circuit Court, Franklin County, to the October Term, A. D. 1880.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, T. B. NEEDLES, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; Chas. A. Akin, Clerk of the County Court, Franklin County, Illinois; Wm. D. Seeber, Sheriff of Said County; James Hill & W. H. Nye, W. Bayard Cutting, James M. Warren, and the unknown holders of 149 bonds, of the denomination of $1,000 each, issued by Franklin county in payment of subscription to the Belleville and Eldorado Railroad.

The above-named defendants will please take notice that complainants will on the 8th day of July, 1880, apply before Hon. David J. Baker, one of the judges of the first judicial — of the State of Illinois, at chambers, in the city of Mt. Vernon, State of Illinois, for an injunction in the above-entitled cause, when and where you may appear, if you think proper, and resist said application.

June 30th, 1880.

W. J. ALLEN,
THOS. J. LAYMAN,
Sol's for Compl's.

We acknowledge service of the within notice this 1st day of July, A. D. 1880.

W. D. SEEBER,
Sheriff of Franklin County, Ills.
CHAS. A. AKIN,
82 *County Clerk of Franklin County, Illinois.*

Indorsed: Filed Aug. 4, 1880. R. H. Flannigan, cir. cl'k.

Bill in chancery for injunction and relief.

STATE OF ILLINOIS, }
Franklin County. }

Of the October Term of the Franklin County Circuit Court, A. D. 1880.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE AND ELDORADO RAILROAD COMPANY, CHAS. A. Aiken, County Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thos. B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of $1,000 each, issued by Franklin county, — the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company.

Thos. J. Layman, being by me first duly sworn according to law, on his oath states that he is one of the attorneys for the complainant, The County of Franklin, in the above-styled cause; and he further st-es that on due inquiry the unknown holders of the 149 bonds above mentioned cannot be found, and that the names of said holders are not known to this affiant, and that their post-office address is unknown to this affiant. He further states that the said W. Bayard Cutting, James Hill, William H. Nye, and James M. Warren and each and every one of them resides out of this State. He further states that he has made diligent inquiry to learn the post-office address and residence of the said W. Bayard Cutting, James Hill, William H. Nye, and James M. Warren and each of them, and that he is informed and believes, that the residence and post-office address of the said W. Bayard Cutting is New York
83 city, New York, and that he is informed and believes that the residence and post-office address of the said James Hill is Arkansas City, Kansas, and that he is informed and believes that the residence and post-office address of the said William H. Nye is Rockville, Indiana, and that he is informed and believes that the residence and post-office address of the saod James M. Warren is Evansville, Indiana; and further he says not.

THOS. J. LAYMAN.

Subscribed and sworn to before me this 4th day of August, A. D. 1880.

R. H. FLANNIGAN, *Cir. Clk.*

Filed August 4th, 1880.

Bill in chancery for injunction and relief.

STATE OF ILLINOIS, }
Franklin County. }

Of the October Term of the Franklin Circuit Court, A. D. 1880.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. Aiken, County Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, and James M. Warren and the unknown holders of 149 bonds, of the denomination of $1,000 each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville and Eldorado Railroad Company.

Affidavit of John M. Darr.

John M. Darr, being by me first duly sworn according to law, on his oath states that he resides at Ewing, in Franklin county, Illinois, and that he is one of the commissioners of Franklin county, in the State of Illinois, and that he is chairman of the county board of said Franklin county. He further states that the holders of the said 149 bonds issued by said county to the Belleville
84 and Eldorado Railroad Company and mentioned and described in the bill in the above-styled cause are interested in the subject-matter of this suit, and that the names of the holders of said bonds are unknown, and that he knows nothing of the whereabouts or residence of the holders of said bonds or either of them. He further states that the said W. Bayard Cutting, James Hill, William H. Nye, and James M. Warren and each of them reside out of the State, as he is informed and believes; that he is informed and believes that the residence of the said W. Bayard Cutting is New York city, New York, and that he is informed and believes that the residence of William H. Nye is Rockville, Indiana, and that he is informed and believes that the residence of the said James Hill is Arkansas City, Kansas, and that he is informed and believes that the residence of the said James M. Warren is Evansville, Indiana.

JOHN M. DARR.

Subscribed and sworn to before me this 4th day of August, A. D. 1880.

R. H. FLANNIGAN, *Cir. Clk.*

Filed Aug. 4th, 1880.

R. H. FLANNIGAN, *Cir. Clk.*

Summons.

STATE OF ILLINOIS, }
Franklin County. }

The people of the State of Illinois to the sheriff of Sangamon county, Greeting:

We command you to summons Thomas B. Needles, auditor of public accounts of the State of Illinois, and J. C. Smith, treasurer of the State of Illinois, impleaded with the Belleville and Eldorado Railroad Company; Chas. A. Akin, county clerk of Franklin county, Illinois; W. D. Seeber, sheriff and collector of Franklin county, Illinois; W. Bayars Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of one hundred and forty-nine bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of the
85 subscription to the capital stock of the Belleville & Eldorado Railroad Company, if *he* shall be found in your county, personally to be and appear before the circuit court of said Franklin county, on the first day of the next term thereof, to be holden at the court-house, in Benton, in the said Franklin county, on the 25th day of October, A. D. 1880, to answer unto The County of Franklin in its certain bill of complaint in chancery for injunction and relief filed in said court on the chancery side thereof; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness R. H. Flannigan, clerk of our said circuit court, and the seal thereof, at Benton, this 4th day of August, A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

Executed this writ by reading the same and delivering a true copy thereof to each Thomas B. Needles, auditor of public accounts of Illinois, and J. C. Smith, treasurer of the State of Illinois, both within named, this 11th day of August, 1880. The other within-named defendants not found in my county.

S. N. SHOUP,
Sh'ff Sang. Co.

Sh'ff's fees, $2.00, paid by cl'k.
Filed in the circuit court this 12th day of August, —.
R. H. FLANNIGAN, *Clerk.*

Injunction Writ.

STATE OF ILLINOIS, }
Franklin County. }

The people of the State of Illinois to Thomas B. Needles, auditor of public accounts of the State of Illinois, and your successors in office, and J. C. Smith, treasurer of the State of Illinois, and your successors in office and your attorneys, solicitors, agents, and servants, and to each and every one of them, Greeting:

Whereas it has been represented to the Honorable David J. Baker,

one of the judges of the first judicial circuit of the State of
86 Illinois, on the part of The County of Franklin, complainant in a certain bill of complaint exhibited before said judge and filed in said court against you, the said Thomas B. Needles, auditor of public accounts of the State of Illinois, and your successors in office, and J. C. Smith, treasurer of the State of Illinois, and your successors in office, to be relieved touching the matter therein complained of, in which bill is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actions and doings in the premises are contrary to equity and good conscience; and the said judge having under his hand endorsed upon said bill an order that a writ of injunction issue out of said court according to the prayer of said bill:

We, therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said Thomas B. Needles, auditor of the public accounts of the State of Illinois, and your successors in office, and J. C. Smith, treasurer of the State of Illinois, and your successors in office, and the persons before mentioned and each and every one of you that you do absolutely desist and refrain from estimating and determining the rate per centum on the valuation of the property within Franklin county requisite to meet and satisfy the amount of interest due or to become due on 149 bonds, of the denomination of one thousand dollars each, issued by said county in payment of subscription to the capital stock of the Belleville and Eldorado Railroad Company; and you and your successors are hereby enjoined from making or transmitting to the county clerk of said county any certificate stating such estimate requisite for the payment of the interest on said bonds or for the payment of any of said bonds or from paying the coupons on 149 bonds, of the denomination of one thousand dollars each, issued
by said county in payment of subscription to the capital
87 stock of the Belleville & Eldorado Railroad, or either of them or any of said bonds or any part thereof, until this honorable court in chancery sitting shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the sheriff of Sangamon county to execute and return in due form of law.

Witness R. H. Flannigan, clerk of said circuit court, and the seal thereof, at Benton, in said county, this 4th day of August, A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

Served this writ on the within-named Thomas B. Needles, auditor, &c., and J. C. Smith, treasurer, &c., by reading the same and by delivering a true copy thereof to each of them the 11th day of August, 1880.

S. N. SHOUP,
Sheriff Sang. Co.

Filed in said court this 12th day of August, A. D. 1880.
R. H. FLANNIGAN, *Clerk.*

Summons.

STATE OF ILLINOIS, }
Franklin County. }

The people of the State of Illinois to the coroner of Franklin county, Greeting:

We command you that you summons the Belleville & Eldorado Railroad Company, Chas. A. Akin, county clerk of Franklin county, Illinois; W. D. Seeber, sheriff and collector of Franklin county, Illinois; Thomas B. Needles, auditor of the public accounts of the State of Illinois; J. C. Smith, treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of the subscription to the capital stock of the Belleville & Eldorado Railroad Company, if they shall be found in your county, personally to be and to appear before the circuit court of said Franklin county, on the first day of the next term thereof, to be holden at the court-house in Benton, in said Franklin county, on the 25th day of October, A. D. 1880, to answer unto The
88 County of Franklin in its certain bill of complaint in chancery for injunction and relief filed in said court on the chancery side thereof; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness R. H. Flannigan, clerk of our said circuit court, and the seal thereof, at Benton, this 4th day of August, A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

STATE OF ILLINOIS, }
Franklin County. }

I have duly served the within on the Belleville & Eldorado Railroad Company by reading and delivering a true copy of the within to G. B. Hoblit, a director and secretary of said railroad company, the president of said railroad company not residing or being found in my county. I have also served the within on the within-named Chas. A. Akin, clerk of the county court of Franklin county, Ills., and W. D. Seeber, sheriff and *ex officio* collector of Franklin county, Ill., by reading to each of them and delivering a true copy of the same to each of them. The within-named unknown bondholders and the within-named James Hill, William H. Nye, W. Bayard Cutting, and James M. Warren; J. C. Smith, treasurer of the State of Illinois, and Thomas B. Needles, auditor of public accounts of the State of Illinois, not found in my county. Dated this 18th day of August, 1880.

A. H. COOK, *Coroner.*

Filed in circuit court this 18th day of August, A. D. 1880.

R. H. FLANNIGAN, *Clerk.*

Injunction Writ.

STATE OF ILLINOIS, }
Franklin County. }

The people of the State of Illinois to W. D. Seeber, sheriff and collector of Franklin county, Illinois, and your successors in office and Chas. A. Akin, county clerk of Franklin county, Illi-
89 nois, and your successor in office and your attorneys, solicitors, and agents and servants, and to each and every one of them, Greeting:

Whereas it has been represented to the Honorable David J. Baker, one of the judges of the first judicial circuit of the State of Illinois and the sole presiding judge of the circuit court of Franklin county, in said circuit and State aforesaid, on the — of The County of Franklin, complainant, in a certain bill of complaint exhibited before said judge and filed in said court against you, the said W. D. Seeber, sheriff and collector of Franklin county, Illinois, and your successors in office and Chas. A. Akin, county clerk of Franklin county Illinois, and your successors in office to be relieved touching the matters therein complained of, in which bill is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience, and the said judge having under his hand indorsed upon said bill an order that a writ of injunction issue out of said court according to the prayer of said bill: We, therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said W. D. Seeber, sheriff and collector of Franklin county, Illinois, and your successors in office and Chas. A. Akin, county clerk of Franklin county, Illinois, and your successors in office and the persons before mentioned, and each and every one of you, that you do absolutely desist and refrain from collecting any more of the taxes to pay the interest on 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, and from adding, extending, or placing on any of the collector's books of said county any estimate or estimates which the State auditor may transmit or send to you for the purpose of paying the interest on 149 bonds, of
90 the denomination of one thousand dollars each, issued by said county in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, or either of them or either of said bonds, until this honorable court, in chancery sitting, shall make other orders to the contrary. Hereof fail not under the penalty of what the law directs. To the coroner of said county to execute and return in due form of law.

Witness R. H. Flannigan, clerk of said circuit court, and the seal thereof, at Benton, in said county, this 4th day of Aug., A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

STATE OF ILLINOIS, }
Franklin County. }

I have duly served the within on W. D. Seeber, sheriff and collector of Franklin county, Illinois, and Chas. A. Akin, clerk of the county court of Franklin county, Ills., by reading the same to them and delivering a true copy of the same to each of them as I am therein commanded. Dated this 18th day of Aug., 1880.

A. H. COOK,
Coroner of Franklin Co., Ill.

Filed in court this 18th day of August, A. D. 1880.

R. H. FLANNIGAN, *Clerk.*

Injunction Writ.

STATE OF ILLINOIS, }
Franklin County. }

The people of the State of Illinois to the Belleville & Eldorado Railroad Company, James M. Warren, W. Bayard Cutting, James Hill, William H. Nye, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, and your attorneys, solicitors, agents, and servants, and to each and every one of them, Greeting:

Whereas it has been represented to the Honorable David J. Baker, one of the judges of the first judicial circuit of the State of
91 Illinois and the sole presiding judge of the circuit court of Franklin county, in said circuit and State aforesaid, on the part of The County of Franklin, complainant, in its certain bill of complaint exhibited before said judge and filed in said court against you, the said Belleville & Eldorado Railroad Company, James M. Warren, W. Bayard Cutting, James Hill, William H. Nye, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, Ills., in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, to be relieved touching the matter therein complained of, in which bill is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience, and the said judge having under his hand endorsed upon the said bill an order that a writ of injunction issue out of said court according to the prayer of said bill: We, therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said Belleville & Eldorado Railroad Company, James M. Warren, W. Bayard Cutting, James Hill, William H. Nye, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, Illi-

nois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company and the persons before mentioned, and each and every one of you, that you do absolutely desist and refrain from suing said county on any of the coupons on said bonds until this honorable court, in chancery sitting, shall make other order to the contrary. Hereof fail not under penalty of what the law directs. To the coroner of said county to execute and return in due form of law. Witness R. H. Flannigan, clerk of said circuit court, and the seal thereof, at Benton, in said county, this 4th day of August, 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

92 STATE OF ILLINOIS, }
Franklin County. }

I have duly served the within on the Belleville & Eldorado Railroad Company by reading and delivering a true copy of the same to G. B. Hoblit, a director and secretary of said railroad company; the within-named bondholders, James Hill, William H. Nye, W. Bayard Cutting, and James M. Warren, not found in my county.

Dated this 18th day of August, A. D. 1880.

R. H. FLANNIGAN, *Clerk.*

Certificate of Mailing Notice to Non-Resident Defendant.

STATE OF ILLINOIS, }
Franklin County. }

In Chancery.

COUNTY OF FRANKLIN
vs.
BELLEVILLE & ELDORADO RAILROAD COMPANY. } In Chancery.

I, R. H. Flannigan, clerk of the circuit court of said county, in the State aforesaid, do hereby certify that on the 19th day of August, A. D. 1880, being within ten days after the first publication of the notice hereunto appended, I sent by mail a copy of said notice to William H. Nye, defendant, at Rockville, State of Indiana, in pursuance of section 12 of an act of the General Assembly of the State of Illinois entitled "An act to regulate the practice in courts of chancery," approved March 15th, 1882.

Witness my hand and seal of said court this 19th day of August, A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

Copy of Notice Herein Referred To.

Chancery notice.

STATE OF ILLINOIS, }
Franklin County. }

To the October Term of the Franklin County Circuit Court, A. D. 1880.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS.
93 A. Akin, County Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company.

Bill in chancery for injunction and relief.

Affidavits having been filed in my office that the above-named W. Bayard Cutting, James Hill, William H. Nye, James M. Warren are non-resident- of the State of Illinois, and that the above-mentioned unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, cannot be found, and that the name- of the holders of said bonds are unknown, and that their post-office *and* address and residence is unknown, now, therefore, you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of one hundred and forty-nine bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in the payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, the defendants in the above-styled cause, are hereby notified that the complainant has this day filed it- bill in chancery for injunction and relief in this court against you, impleaded with the other defendants as above set forth, and that a summons in chancery has this day been issued for both you and the other defendants named above, which summons is returnable on the first day of the
94 next term of our circuit court, to be commenced and holden at the court-house in Benton, in said county of Franklin and State of Illinois, on the 4th of October next, and unless you, the said W. Bayard Cuttin, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomina-

tion of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to capital stock of the Belleville & Eldorado Railroad Company, appear and plead, answer, or demurr to said bill within the time limited for that purpose by the court the matters and things set forth in said bill will be taken as confessed by you and a decree entered accordingly.

Given under my hand this 4th day of August, A. D. 1880.

R. H. FLANNIGAN,
Clerk of the Cir. Court.

ALLEN & LAYMAN,
Complainant's Sol.

Filed this 19th day of August, 1880.

R. H. FLANNIGAN, *Clerk.*

Certificate of Mailing Notice to Non-Resident Defendant.

In Chancery.

STATE OF ILLINOIS, }
Franklin County. }

COUNTY OF FRANKLIN
vs.
BELLEVILLE & ELDORADO RAILROAD COMPANY. } In Chancery.

I, R. H. Flannigan, clerk of the circuit court of said county, in the State aforesaid, do hereby certify that on the 19th day of Aug., A. D. 1880, being within ten days after the publication of the notice hereunto appended, I sent by mail a copy of said notice to W. Bayard Cutting, defendant, at New York city, New York, in pursuance — section 12 of an act the General Assembly of the State of Illinois entitled "An act to regulate the practice in courts of chancery," approved March 15th, 1872.

Witness my hand and seal of said court this 19th day of Aug., A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

Copy of Notice Herein Referred to.

95 Chancery notice.

STATE OF ILLINOIS, }
County of Franklin }

To the October Term of the Franklin County Circuit Court, A. D. 1880.

THE COUNTY OF FRANKLIN }
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. AKIN, County Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company. }

Bill in chancery for injunction and relief.

Affidavit having been filed that the above-named W. Bayard Cutting, James Hill, William H. Nye, James M. Warren are non-residents of the State of Illinois, and that the above-mentioned unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Rairload Company, cannot be found, and the names of the holders of said bonds are unknown, and that their post-office address and residence is unknown, now, therefore, you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in the payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, the defendants in the above-styled cause, are hereby notified that the above complainant has this day filed its bill in chancery for injunction and relief in this court
96 against you, impleaded with the other defendants, as above set forth, and that a summons in chancery has this day been issued for both you and the other defendants named above, which summons is returnable on the 1st day of next term of our said circuit court, to be commenced and holden at the court-house in Benton, in said county of Franklin and State of Illinois, on the 4th Monday of October next, and unless you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, appear and plead, answer or demur, to said bill within the time — for that purpose by the court, the matters and

things set forth in said bill will be taken as confessed by you and a decree entered accordingly.

Given under my hand this 4th day of Aug., A. D. 1880.

R. H. FLANNIGAN,
Clerk of the Cir. Court.

ALLEN & LAYMAN, *Comp. Sol's.*

Filed this 19th day of Aug., 1880.

R. H. FLANNIGAN, *Clerk.*

Certificate of Mailing Notice to Non-Resident Defendant.

STATE OF ILLINOIS, }
Franklin County. }

COUNTY OF FRANKLIN
vs.
BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.* } In Chancery.

I, R. H. Flannigan, clerk of the circuit court of said county, in the State aforesaid, do hereby certify that on the 19th day of August, A. D. 1880, being within ten days after the first publication of the notice hereunto appended, I sent by mail a copy of said notice to James Hill, defendant, at Arkansas City, Kansas, in pursuance of section 12 of an act of the General Assembly of
97 the State of Illinois entitled "An act to regulate the practice in court of chancery," approved March 15th, 1872. Witness my hand and the seal of said court this 19th day of Aug., A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

Copy of notice herein referred to:

Chancery Notice.

STATE OF ILLINOIS, }
Franklin County. }

To the October Term of the Franklin County Circuit Court, A. D. 1880.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. Akin, Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company.

Bill in chancery for injunction and relief.

Affidavits having been filed in my office that the above-named

W. Bayard Cutting, James Hill, William H. Nye, and James M. Warren are non-residents of the State of Illinois, and that the above-mentioned unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, cannot be found, and that the names of the holders of said bonds are unknown, and that their post-office address and residence is unknown, now, therefore, you, the — W. Bayard Cutting, James Hill, William H.
98 Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in the payment of subscription to the capital stock of The Belleville & Eldorado Railroad Company, the defendants in the above-styled cause, are hereby notified that the above complainant has this day filed its bill in chancery for injunction and relief in this court against you, impleaded with the other defendants, as above set forth, and that a summons in chancery has this day been issued for both you and the other defendants named above, which summons is returnable on the first day of the next term of our said circuit court, to be commenced and holden at the court-house, in Benton, in said county of Franklin and State of Illinois, on the 4th Monday of October next, and unless you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to capital stock of the Belleville & Eldorado Railroad Company, appear and plead, answer or demur, to the said bill within the time limited for that purpose by the court, the matters and things set forth in said bill will be taken as confessed by you and a decree entered accordingly.

Given under my hand this 4th day of August, A. D. 1880.

R. H. FLANNIGAN, *Clerk.*

ALLEN & LAYMAN,
Comp'l' Solicitors.

Filed this 19th day of Aug., 1880.

R. H. FLANNIGAN, *Clerk.*

Certificate of Mailing Notice to Non-Residents. In Chancery.

STATE OF ILLINOIS, }
Franklin County. }

THE COUNTY OF FRANKLIN
vs.
BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.* } In Chancery.

I, R. H. Flannigan, clerk of the circuit court of said county, in the State aforesaid, do hereby certify that on the 19th day of
99 Aug., A. D. 1880, being within ten days after the first publication of the notice hereunto appended, I sent by mail a copy

of said notice to James M. Warren, defendant, at the city of Evansville, State of Indiana, in pursuance of section 12 of an act of the General Assembly of the State of Illinois entitled "An act to regulate the practice in courts of chancery," approved March 15th, 1872.

Witness my hand and the seal of said court this 19th day of Aug., A. D. 1880.

[SEAL.] R. H. FLANNIGAN, *Clerk.*

Copy of notice herein referred to:

Chancery Notice.

STATE OF ILLINOIS, }
Franklin County. }

To the October Term of the Franklin County Circuit Court.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY; CHAS. A. Akin, County Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company.

Bill in chancery for injunction and relief.

Affidavits having been filed in my office that the aboved-named W. Bayard Cutting, James Hill, William H. Nye, James M. Warren are non-residents of the State of Illinois, and that the above-mentioned unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, cannot be found, and that the names of the holders of said bonds are unknown, and that their post-office address and residence is unknown: Now, therefore, you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in the payment of the subscription to the capital stock of The Belleville & Eldorado Railroad Company, the defendants in the above-styled cause, are hereby notified that the above complainant has this day filed its bill in chancery for injunction and relief in this court against you, impleaded with the

100

other defendants as above set forth, and that a summons in chancery has this day been issued for both you and the other defendants named above, which summons is returnable on the first day of the next term of our said circuit court, to be commenced and holden at the court-house in Benton, in said county of Franklin, in the State of Illinois, on the 4th Monday of October next, and unless you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to capital stock of Belleville & Eldorado Railroad Company, appear and plead, answer or demur, to said bill within the time limited to that purpose by the court, the matters and things set forth in said bill will be taken as confessed by you and a decree entered accordingly.

Given under my hand this 4th day of Aug., A. D. 1880.

R. H. FLANNIGAN,
Clerk of the Cir. Court.

ALLEN & LAYMAN,
Comp'l's Solicitors.

Certificate of Publication.

STATE OF ILLINOIS, }
Franklin County. }

I, the undersigned, publisher of the Benton Standard, a public newspaper printed in the town of Benton, in the county
101 and State aforesaid, do hereby certify that a notice, of which the annexed is a true copy, has been regularly published in said newspaper four times in succession, commencing on the 6th day of Aug., A. D. 1880, and ending on the 27th day of Aug., 1880.

Given under my hand, at my office in Benton aforesaid, this 26th day of October, A. D. 1880.

A. M. BROWNLEE,
Publisher Standard.

Printer's fee, $8—. Received payment.

Chancery Notice.

STATE OF ILLINOIS, }
Franklin County. }

To the October Term of the Franklin County Circuit Court, A. D. 1880.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. Akin, County Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company.

Bill in chancery for injunction and relief.

Affidavits having been filed in my office that the above-named W. Bayard Cutting, James Hill, William H. Nye, James M. Warren are non-residents of the State of Illinois, and that the above-mentioned unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, cannot be found, and that the names of the holders of said bonds are unknown, and that their post-office address and residence is unknown: Now, therefore,
102 you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in the payment of subscription to the capital stock of The Belleville & Eldorado Railroad Company, the defendants in the above-styled cause, are hereby notified that the above complainant has this day filed its bill in chancery for injunction and relief in this court against you, impleaded with the other defendants as above set forth, and that a summons in chancery has this day been issued for both you and the other defendants named above, which summon- is returnable on the first day of the next term of our said circuit court, to be commenced and holden at the court-house, in Benton, in said county of Franklin and State of Illinois, on the 4th Monday next, and unless you, the said W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company, appear and plead, answer or demur, to said bill within the time limited for that

purpose by the court the matters and things set forth in said bill will be taken as confessed by you and a decree entered accordingly.

Given under my hand this 4th day of Aug., A. D. 1880.

R. H. FLANNIGAN,
Clerk of the Cir. Court.

ALLEN & LAYMAN,
Comp't's Solicitors.

Filed October 26th, 1880.

R. H. FLANNIGAN, *Cir. Clerk.*

Bill in Chancery for Injunction and Relief.

COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. Akin, County Clerk of Franklin County, Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; 103 Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company.

Wednesday, October 27th, A. D. 1880.—This day comes the complainant, by Allen & Layman, its solicitors, none appearing for defendants or either of them, and the court finding that the defendants J. C. Smith, treasurer of the State of Illinois; Thomas B. Needles, auditor of public accounts of the State of Illinois; W. B. Seeber, sheriff and collector of Franklin county, Illinois; Chas. A. Akin, clerk of the county court of Franklin county, Illinois, and the Belleville & Eldorado Railroad Company had been duly and personally se-ved with process of summons herein more than ten days before the commencement of this term of the court; and the court further finding that due and proper service by publication, according to law, had been had upon the other defendants, to wit, James Hill, William H. Nye, W. Bayard Cutting, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county, in the State of Illinois, in payment of subscription to the capital stock *to* the Belleville and Eldorado Railroad Company, and the said defendants still failing to plead, answer, or demur to said complainant's bill, it is therefore ordered, adjudged, and decreed that the same be taken *pro confesso*, and thereupon this cause comes on to be heard upon the bill so taken as confessed, and was argued by complainant's counsel, Messrs. Al-en & Layman, and the court being fully advised in the premises, on consideration whereof the court doth find the 149 bonds, of the denomination of one thousand dollars each, is-

sued by Franklin county, Illinois, in payment of subscription
104 to the capital stock of the Belleville & Eldorado Railroad Company, being the bonds mentioned in complainant's bill, and each and every one of them were issued without any authority of law, and that each and every *of* of said bonds, together with the coupons thereto attached, were and are absolutely null and void, it is therefore ordered, adjudged, and decreed by the court that the holders of said bonds and coupons above described be required to deliver the same up to complainant for cancellation and destruction, and that upon such delivery of said bonds or any part or parcel thereof the said complainant surrender to such holder or holders of bonds so delivered for cancellation and destruction certificates of stock in the Belleville & Eldorado Railroad Company to the amount equal to the bond or bonds so delivered for the purpose aforesaid.

And it is further ordered, adjudged, and decreed by the court that the defendant Thomas B. Needles, auditor of public accounts of the State of Illinois, and his successors in office, be, and he is hereby, perpetually enjoined and rest-ained from estimating and determining the rate per centum on the valuation of property within said Franklin county requisite to meet and satisfy the amount of interest due or to become due on said bonds or either of them, and from making or transmitting to the county clerk of said Franklin county any certificate or certificates stating such estimated requisite for paying the interest on any of said bonds or for the payment of said bonds or either of them.

And it is further ordered, adjudged, and decreed by said court *taht* defendant Chas. A. Akin, county clerk of said Franklin county, and his successors in office, be perpetually enjoined from extending or placing on the tax or collector's book of said county any levy of taxes for paying the interest on any of said bonds or either of them.

105 And it is further ordered, adjudged, and decreed by the court that the said defendants James Hill, William H. Nye, W. Bayard Cutting, J-mes M. Warren, and the said Belleville & Eldorado Railroad Company and the unknown holders of the said bonds of said Franklin county and each of them be perpetually enjoined and restrained from suing said county on any or either of the coupons of said bonds or either of said bonds; and that the said J. C. Smith, treasurer of the State of Illinois, and his successors in office be perpetually enjoined and restrained from paying the coupons upon said bonds or either of them or any of said bonds or either of them; and that the said W. B. Seeber, sheriff and collector of Franklin county, and his successors in office be perpetually enjoined and restrained from collecting any more of the taxes to pay the interest on said bonds or either of them or to pay said bonds or either of them, and from making any further payment to the State treasurer of the money collected to pay the interest on said bonds or either of them.

And it is further ordered, adjudged, and decreed that the so-called subscription of one hundred and fifty thousand dollars to the capital stock of the said railroad company, made on the 13th day of De-

cember, A. D. 1876, and the attempt made by the county board on the 12th day of November, A. D. 1877, to amend said subscription and to contract for the building of said railroad were, and are, unlawful and void.

And it is further ordered and decreed that complainant receive of defendants the costs herein and may have execution therefor, etc.

Approved.

D. M. B., *Judge.*

In the Circuit Court of Franklin County, State of Illinois, October Term, A. D. 1881.

To the honorable the judge of the circuit court of Franklin county in the State of Illinois, in chancery sitting:

The petition of the People's Savings Banks of Evansville, Indiana, *respectively* shows to your honor that it is a corporation
106 created and existing under and by virtue of the laws of the State of Indiana; that at the October term, A. D. 1880, of this the Franklin county circuit court and on the 27th day *fo* October, A. D. 1880, a final decree was passed and entered of record in said court in a certain cause therein pending, wherein The County of Franklin was complainant and The Belleville & Eldorado Railroad Company, Chas. A. Akin, county clerk of Franklin county, Illinois; W. D. Seeber, sheriff of Franklin county, Illinois; Thomas B. Needles, auditor of public accounts of the State of Illinois; J. C. Smith, treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, and the unknown holders of 149 bonds, of the denomination of one thousand dollars each, issued by Franklin county to the State of Illinois in payment of subscription to the capital stock of the Belleville & Eldorado Railroad Company were the defendants; that you petitioner was at the commencement of said suit and ever since has been and now is the owner and holder of the bonds of Franklin county, State of Illinois, numbered respectively sixteen and sixty-seven, issued to the Belleville & Eldorado Railroad Company, specified in and a part of the subject-matter of said suit and decree, and one of the defendants designated and described as "the unknown holders" of said bonds, and that the only defendants having any interest in said suit are those so designated as "the unknown holders," etc.; that your petitioner has never been within the jurisdiction of the State of Illinois, and has continuously since its organization been a citizen of the State of Indiana; that your petitioner has never been summoned in the aforesaid cause or served with a copy of complainant's bill filed herein or received the notice to be sent by mail or received any notice in writing of such decree.

107 Your petitioner therefore prays to be heard touching the matters of said decree, and that its corporate name may be substituted in the place of the unknown holder of bonds numbered sixteen and sixty-seven, and your petit-oner now here offers to pay such cost as the court shall deem reasonable in that behalf, and also that your honor will make such orders in the premises and grant

such relief as is warranted by the statute in such case made and provided; and your petit-oner will ever pray, etc.

THE PEOPLE'S SAVINGS BANK OF EVANSVILLE, INDIANA,
[SEAL.] By M. HENNIGS, *Pres't.*

STATE OF INDIANA, }
County of Vanderburg. }

Mathew Henning, first being duly sworn, on his oath says he is of lawful age; that he is president of the People's Savings Bank of Evansville, Indiana, the aforesaid petitioner; that he has read the foregoing petition, and the matters and things therein stated are true in substance and in matter of fact, and that he makes this affidavit for and on behalf of said petitioner, and further says nothing.

THE PEOPLE'S SAVINGS BANK OF EVANSVILLE, INDIANA,
By M. HENNING, *President.* [SEAL.]

Subscribed and sworn to before me this 20th day of October, A. D. 1881, by the said Mathew Henning, pres't.

In testimony whereof I have hereunto set my hand and official seal the day and year aforesaid.

[SEAL.] ROBERT D. RICHARDSON,
Notary Public, Vanderburg County, Indiana.

Filed October 25th, 1881.

JAMES F. MASON, *Cir. Clerk.*

In the Circuit Court of said County of the October Term, A. D. 1881. In Equity.

STATE OF ILLINOIS, }
Franklin County. }

COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY and Others. }

108 The petition of the People's Savings Bank of Evansville, Indiana, respectfully shows that it is one of the defendants herein; that it is now and at the commencement of this suit was a citizen of the State of Indiana and a corporation organized and existing under the laws of the said State of Indiana, and has its place of business in the city of Evansville, in said State, and that the said complainant is a citizen of the State of Illinois.

Your petitioner further shows to your honor that it is the sole owner of two of the bonds of Franklin county, State of Illinois, of the denomination and value of one thousand dollars each, sought to be invalidated by the complainant's bill, and that the matter in dispute and controversy between the said complainant and this defendant petitioner exceed- the sum of five hundred dollars, exclusive of costs, to wit, the sum of two thousand dollars.

Your petitioner would further show to your honor that as between the same complainant and your petitioner the said controversy is wholly between citizens of different States, and that the same can be fully determined as between them without reference to the co-defendants. Your petitioner would further show to your honor that the present term of this court is the first term at which this cause could have been tried, and that this has not been tried and is now pending in this court; that your petitioner desires to remove this cause to the circuit court of the United States for the southern district of Illinois, according to the act of Congress in such cases made and provided, and the petitioner herewith tenders a bond as required by said act and asks that the proper order be made in the premises.

THE PEOPLE'S SAVINGS BANK
OF EVANSVILLE, INDIANA,
By M. HENNING, *President.* [SEAL.]

STATE OF INDIANA,
County of Vanderburg.

Mathew Henning, first being duly sworn, on his oath says he is of lawful age; that he is president of the People's Savings
109 Bank of Evansville, Indiana, the aforesaid petitioner; that he has read the foregoing petit-on, and the matters and things therein stated are true in substance and *the* matter of fact, and that he makes this affidavit for and on behalf of said petitioner, and further he says nothing.

THE PEOPLE'S SAVINGS BANK
OF EVANSVILLE, INDIANA,
By M. HENNING, *President.* [SEAL.]

Subscribed and sworn to before me by the said Mathew Henning, president, this 20th day of October, A. D. 1881.

In testimony whereof I have hereunto set my hand and official seal the day and year last aforesaid.

[SEAL.] ROBERT D. RICHARDSON,
Notary Public, Vanderburg County, Indiana.

Filed this October 25th, A. D. 1881.

JAMES F. MASON, *Clerk.*

In the Circuit Court of Franklin County, State of Illinois, of the October Term A. D. 1881. In Equity.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY and Others.

Now comes the People's Savings Bank of Evansville, Indiana, a corporation organized and existing under and by virtue of the laws of said State, and presents to the court its petit-on, duly verified, and moves the court—

1st. To redocket the aforesaid cause.

2nd. To make an order substituting the name of your petitioner in the place of the unknown holders of bonds numbered respectively sixteen and sixty-seven, and that such proceedings may be had in said cause as if the said People's Savings Bank of Evansville, Indiana, had appeared in due season and no decree had been made herein.

THE PEOPLE'S SAVINGS BANK
OF EVANSVILLE, IND.,
By SAMUEL P. WHEELER,
Its Attorney.

Filed this October 25th, A. D. 1881.
JAMES F. MASON, *Cir. Clerk.*

Know all men by these presents that we, the People's Savings Bank of Evansville, Indiana, as principal, and Samuel P. Wheeler, of the county of Alexander, in the State of Illinois, as surety, are held and firmly bo-nd unto the county of Franklin, in the State of Illinois, in the penal sum of $500, for the payment whereof, well and truly to be made, we bind ourselves, our successors, heirs, representatives, and assigns, jointly, severally, and firmly, by these presents; yet, upon these conditions, the said The People's Saving Bank of Evansville, Indiana, having petitioned the circuit court of Franklin county, Illinois, for the removal of a certain cause therein pending, wherein The County of Franklin is complainant and The People's Savings Bank of Evansville, Indiana, impleaded with others, is defendant, to the circuit court of the United States for the southern district of Illinois: Now, if the People's Savings Bank of Evansville, Indiana, shall enter in the said circuit court of the United States, on or before the first day of its next term, a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully removed thereto, then this obligation shall be void; otherwise to be in full force and virtue.

110

Witness our hands and seal- the 20th day of October, A. D. 1881.

THE PEOPLE'S SAVINGS BANK OF
EVANSVILLE, INDIANA,
By M. HENNING, *President.* [SEAL.]
SAMUEL P. WHEELER. [SEAL.]

STATE OF ILLINOIS, }
Franklin County. }

Samuel P. Wheeler, being duly sworn, on his oath says he is the security who signed the foregoing bond; that he — worth five hundred dollars over and above his debts and exceptions; that he resi-es in the county of Alexander, in the State of Illinois, and further he says nothing.

SAMUEL P. WHEELER.

Subscribed and sworn to before me by Samuel P. Wheeler the 25th day of October, A. D. 1881.

JAMES F. MASON, *Clerk.*

Filed this October 25th, A. D. 1881.

JAMES F. MASON, *Clerk.*

111 In the Circuit Court of Franklin County, State of Illinois, October Term, 1881.

COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY and Others.

Now comes the German Savings Bank of Davenport, Iowa, a corporation organized and existing under and by virtue of the laws of the said State of Iowa, and presents to the court its petition, duly ve-ified, and moves the court—

1st. To redocket the aforesaid cause.

2nd. To make an order substituting the name of your peti-oner in the place of the unknown holder of the certain bonds particularly described by their numbers in the petition of the petitioner, and that such proceedings may be had in said cause as if the said German Savings Bank of Davenport, Iowa, had been made herein.

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA,
By E. E. COOK AND
G. C. CARSTEN, *Its Solicitors.*

Filed October 27th, A. D. 1881.

JAMES F. MASON, *Clerk.*

In the Circuit Court.

STATE OF ILLINOIS,
County of Franklin.

THE COUNTY OF FRANKLIN, ILLINOIS,
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. Akin, Clerk of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; W. D. Seeber, Sheriff and Collector of Franklin County, Illinois; J. C. Smith, State Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, the unknown holders of the bonds of Franklin county, Illinois, and The German Savings Bank of Davenport, Iowa (a holder of certain of said bonds), Defendants.

Petition of the German Savings Bank of Davenport, Iowa, to be Heard in said Cause.

112 To the said circuit court:

Your petitioner, The German Savings Bank of Davenport, Iowa, states that it is and at and long before the commencement of the above-entitled suit was a corporation organized and existing under the laws of the State of Iowa and having its principal place

of business at the city of Davenport, in the said State of Iowa; that by complainant's bill in said cause the unknown holders of bonds of Franklin county, Illinois, are made defendants; that at and long before the commencement of said suit your petitioner owned and held eighteen of said bonds of said Franklin county, Illinois, for the sum of one thousand dollars each, issued under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, 1861, which said bonds are numbered as follows: 11, 12, 14, 30, 33, 34, 35, 39, 47, 56, 57, 58, 59, 60, 62, 63, 66, and 67, of the aggregate value of eighteen thousand dollars, besides the interest; and your petitioner further owned and held long before the commencement of said suit nine of the bonds of Franklin county for the sum of one thousand dollars each, issued under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to authorize cities and counties to subscribe stock to railroads," approved November the 6th, 1849, which said bonds — as follows: 15, 18, 39, *1*, 40, 41, 42, 43, 45, and 46, of the aggregate value of nine thousand dollars, besides interest; that petitioner still owns and holds all of the said twenty-seven bonds, and that it was and is one of the unknown holders sought to be affected by the decree rendered in said cause by the court on or about the 27th day of October, 1880. Your petitioner further states that it was never summoned or served with a copy of the bill nor received the notice required to be sent by mail. Petitioner therefore asks that it
113 may be heard touching the matters of the decree in this cause, and that it may appear and answer the complainant's bill, and that such proceedings shall be had as if petitioner had appeared in due season and no decree had been made. Petitioner will pay such costs as this court shall deem reasonable in this behalf, but respectfully submits to the court that no costs should be taxed against it by the reason of the granting of this application.

THE GERMAN SAVINGS BANK OF
DAVENPORT, IOWA,
By H. H. ANDERSON, *Cashier.*
G. G. CARSTENS AND
E. E. COOK,
Solicitors for said German Savings Bank.

STATE OF IOWA, }
Scott County. }

I, H. H. Anderson, being duly sworn, do say that I am the cashier of the German Savings Bank of Davenport, Iowa, a corporation, which makes the foregoing petition; that I have read the said petition, and all the statements thereof are true, as I verily believe.

H. H. ANDERSON.

Subscribed by the said H. H. Anderson in my presence and by him sworn to before me this 3rd day of October, 1881.

[SEAL.] JACOB STRASSER,
Notary Public, Scott Co., Ia.

Filed this October 27th, A. D. 1881.

JAMES F. MASON, *Clerk.*

Answer of German Savings Bank of Davenport, Iowa.

STATE OF ILLINOIS, }
County of Franklin. }

In Circuit Court.

THE COUNTY OF FRANKLIN, ILLINOIS,
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. AKIN, Clerk of Franklin County, Illinois; W. B. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of the State of Illinois; J. C. Smith, State Treasurer of the State of Illinois; W. Bayard Cutting, James Hill,
114 William H. Nye, James M. Warren, the unknown holders of bonds of Franklin county, Illinois, and The German Savings Bank of Davenport, Iowa (a holder of certain of said bonds), Defendants.

The answer of The German Savings Bank of Davenport, Iowa, one of the defendants, to the bill of complainant, The County of Franklin, Illinois:

This defendant, a corporation organized and existing under the laws of the State of Iowa, reserving to itself all right of exception to the bill of complaint, for answer thereto, saith that it is, and long before the filing of said bill of complaint was, the owner and holder of certain bonds of Franklin county referred to in the said bill of complaint; that this defendant purchased eighteen of the bonds of said Franklin county, for the sum of one thousand dollars each, issued under the provisions of an act of the General Assembly of the State of Illinois, "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22*n*, 1861, which said bonds are numbered 11, 12, 14, 30, 33, 34, 35, 39, 47, 56, 57, 58, 59, 60, 62, 63, 66, and 77, of the aggregate value of eighteen thousand dollars, besides interest; and this defendant also purchased nine of the bonds of said Franklin county, for the sum of one thousand dollars each, issued under the provisions of an act of the General Assembly of the State of Illinois entitled "An act to authorize cities and counties to subscribe stock to railroads," approved November the 6th, 1849, which said bonds are numbered as follows: 15, 18, 39, 40, 41, 42, 43, 45, and 46, of the aggregate value of nine thousand dollars besides, interest; that all of said bonds were purchased by this defendant in good faith for a valuable consideration and without notice of any defense or objection to the validity of any one or more of said bonds before the same were due and before any default in the payment of any interest on any one of said bonds and before the commencement of this suit. Defendant refers to the said

several bonds as they may be produced upon the hearing of
115 this cause; and this defendant, further answering, says that it believes it to be true that on the 24th day of July, 1869, the county court of Franklin county made an order to hold an election on the 11th day of September, 1869, in the county of Franklin, by authority of an act approved February 22nd, 1861, and of an act approved November 6th, 1849, upon the question of whether or not the county of Franklin shall subscribe the sum of two hundred thousand dollars to the capital stock of the Belleville & Eldorado Railroad Company, payable in bonds at par, due in twenty years from date, with 8 % interest per annum, payable semi-annually, of the denomination of one thousand dollars each, and that certain conditions were provided in said notice, as stated in paragraph or division of complainant's bill numbered one, but this defendant does not know the same of its own knowledge.

This defendant, further answering, says that it believes it to be true that on the 11th day of September, 1869, an election was held, and that on the 6th day of November, 1869, the county court entered an order reciting the said election authorizing the county court to subscribe the sum of two hundred thousand dollars to the capital stock of the said railroad company, one hundred thousand dollars by virtue of an act of the General Assembly entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, 1861, and the further sum of one hundred thousand dollars by virtue of an act of the General Assembly, approved November 6th, 1849, authorizing cities and counties to take stock in railroad companies, said capital stock payable in the bonds of Franklin county at par, due in twenty years from the date thereof, at 8 % per annum, payable semi-annually, in denominations of one thousand dollars each, the said bonds to be issued upon certain stated —, as recited in the second paragraph or division of complainant's bill of complaint, but this
116 defendant does not know the same of its own knowledge.

This defendant, further answering, says that it has not knowledge or information sufficient to form a belief as to the truth of the allegations that the said county court never made an order to give notice of the election, as required by law, held September 11th, 1869, or that no notice of said election, as required by law, was ever given, or that said railroad company never complied with the conditions and terms on which stock was subscribed, or that no work on said railroad was commenced in said county of Franklin until 1877, and that no part of the same was completed until the year 1877. Further answering, this defendant says that it believes it to be true that the county court on the 6th day of February, 1871, extended the time for the commencement and completion of said railroad, and that the said subscription was made on the stock books of the said Belleville & Eldorado Railroad Company on certain conditions and terms, as stated in paragraph or division numbered three in the bill of complaint, but this defendant does not know the same of its own knowledge; and this defendant believes it to be true that the said county court made a subscription on the stock books

of the said railroad company, and avers, upon information and belief, that the subscriptions which were so made were legal and binding, and it believes that the subscriptions were made by the said county court, as stated in the fourth paragraph or division of the complainant's bill, but it does not know the same of its own knowledge. Further answering, this defendant says that it believes it to be true that on the 13th day of December, 1876, that the board of supervisors of said Franklin county, by the authority of the people cast at an election held September 11th, 1869, and by the authority of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February the 22nd, 1861, and of an act of the General Assembly approved November the 6th, 1849, did subscribe
117 to the capital stock of the said railroad company the sum of one hundred and fifty thousand dollars, being seventy-five thousand dollars by virtue of each of the acts of the General Assembly heretofore mentioned, said capital stock being payable in the bonds of said Franklin county at par, said bonds to be issued and placed in the hands of a trustee, to be paid out upon conditions stated in the fifth paragraph or division of complainant's bill, but this defendant does not know the same of its own knowledge. Further answering, this defendant says that it believes it to be true that on the 12th day of November, 1877, the board of supervisors of said county made an order to the effect stated in the sixth paragraph or division of the complainant's bill, but this defendant does not know the same of its own knowledge; and this defendant denies that at that time the said subscription had lapsed or become null and void. Further answering, this defendant says that as to the truth of the remaining averments and statements in said bill as to the various acts done it hath not knowledge or information sufficient to form a belief; that this defendant denies all the allegations as to the unconstitutionality of any of said acts or as to the invalidity of the said bonds; and this defendant submits to the court that even if all the allegations of fact made in the said bill are true, never'less, this defendant being a *bona fide* holder for value of the said bonds without notice of any illegality in said bonds or of any irregularity effecting their issue, as hereinbefore stated, the matters alleged in said bill cannot effect this defendant. Further answering, this defendant says that it bought the said bonds in good faith for a valuable consideration, and that it was wholly unaware of any defect of authority or other irregularity on the part of those acting for the said Franklin county, and there was nothing to excite its suspicion of any defect or irreg-
118 ularity, ev-n if such defect or irregularity in fact existed; that the said Franklin county had power to issue negotiable securities, and this defendant presumed, and had a right to presume, that the securities, to wit, the bonds held and owned by it, were issued under the circumstances which gave the requisite authority; that said negotiable securities or bonds held by this defendant as aforesaid on their face import by recitals a compliance with the law or laws under which they were issued, and that this defendant had

no knowledge or suspicion whatever that the said recitals were in any respect untrue, or that there was any defect or irregularity in the exercise of the authority under which said bonds were issued. Further answering, this defendant says that it was the sole province of the officers and the county authorities who executed and issued the bonds as aforesaid to decide whether or not there had been antecedent compliance with the requirements, conditions, and qualifications prescribed to their authority, and avers that the said officers and authorities had determined that there had been such a compliance, and that their declaration to that effect is sufficient and cannot be impugned as against this defendant, a *bona fide* holder as aforesaid; that the said bonds are, or securities were, issued and subscribed to the object of their issue, and that this defendant in purchasing the same had a right to presume and did presume that the conditions precedent to the right to issue had been faithfully fulfilled and to presume and it did presume that all precedent requirements had been complied with; that the omission of any formality or the existence of any fraud on the part of the agents of Franklin county issuing said bonds cannot be urged against this defendant, a *bona fide* holder, seeking to enforce the bonds held by it. Further answering, this defendant says that the said county of Franklin *county* is estopped from objecting to the validity of
119 said bonds. Defendant avers that the said county and the inhabitants thereof failed to interfere and enjoin the issue of the said bonds when they were to be executed, but acquiesced in the issue of the said bonds; and this defendant further says that the said county and its inhabitants had, before the purchase of said bonds, submitted to taxation to pay the interest accruing on said bonds, and that since its purchase of said bonds one installment of interest has been paid thereon, and therefore the bonds and coupons had been ratified and are now valid and binding on the said county. This defendant further states that the shares of stock of said railroad company were received by the said Franklin county in payment for the bonds, and that the said Franklin county has ever since held and owned the same and by virtue thereof has participated in the election of officers of the railroad company and in all other benefits and advantages attendant on said ownership. This defendant further states that on Monday, July 14th, 1879, the said county of Franklin, by its board of supervisors, entered into written articles of agreements with the said Belleville & Eldorado Railroad Company and James Hill & Company, contractors, for the construction of the said Belleville & Eldorado railroad, which articles are in the words and figures following, to wit:

Articles of agreement made and entered into between the county of Franklin, in the State of Illinois, party of the first part; the Belleville & Eldorado Railroad Company, party of the second part, and James Hill & Company, contractors for the construction of the Belleville and Eldorado railroad, party of the third part, witnesseth: That whereas the said county of Franklin has heretofore issued and placed in the hands of the Evansville National bank, of Evans-

ville, Indiana, as trustee, one hundred and fifty bonds of said county of the denomination of one thousand dollars each, which said bonds were placed in the hands of said bank as trustee, in pursuance of a contract with said county of Franklin and said
120 Belleville & Eldorado Railroad Company and the said James Hill & Company for the construction and completion of the Belleville & Eldorado railroad from the east line of Franklin county to Duquoin, in Perry county; and *other* said contract the said trustee was directed to pay said bonds to the said railroad company in *pro rata* installments as each — of said railroad should be completed in pursuance of said contract from the said east line of said Franklin county westward to Duquoin; and whereas said railroad has been completed under said contract two miles west from Benton, in said county, and eighty-three of said bonds have been delivered to said railroad company and James Hill & Company under said contract, leaving sixty-seven of said bonds yet in the hands of said trustee; and whereas the said county of Franklin, party of the first part, did, in the month of May last, retain Andrew D. Duff, counsellor-at-law, to institute suit in the Franklin circuit court to enjoin the delivery of said bonds then in the hands of the said trustee and agreed to pay to said Duff a fee of two thousand dollars, and have paid to said Duff three hundred dollars on said fee; and whereas the said county of Franklin has, by its board of supervisors, abandoned and discontinued said injunction suit whereby the fee of said Duff has become due and payable; and whereas the said Andrew B. Duff has proposed in the spirit of compromise to said county to accept in full satisfaction of his fee in said suit one thousand dollars in addition to the three hundred dollars already paid him; and whereas the said Belleville & Eldorado Railroad Company, through its contractors, the said James Hill & Company, has made ample arrangements for the certain completion of said railroad through to Duquoin in strict compliance with the said contract aforesaid; and whereas all the materials necessary for the completion of said railroad have been bought and paid for and enough thereof is now on the line of said railroad to complete the same eight miles west from Benton, and the
121 remainder of said materials ready to be placed along the line of said road as fast as the work progresses so as to make room therefor; and whereas the said Belleville & Eldorado Company and James Hill & Company have pledged to secure the completion of said road to Duquoin four hundred and fifty-five thousand dollars, par value, of the first-mortgage bonds of said company, together with about seven thousand shares of the capital stock of said company, to W. Bayard Cutting, of the city of New York, who is furnishing the necessary means in addition to the proceeds of the Franklin county bonds necessary for the construction of said railroad to Duquoin; and whereas grave questions as to the liability of the said county of Franklin for damages to the said railroad company and the said James Hill & Co. have grown out of the action of said county with reference to the attempted litigation of said bonds, and as to the individual liability of the members of the board of supervisors;

and whereas it is desirable on the part of parties hereto amicably to adjust and settle all differences growing out of the action of said county relative to said bonds on terms of equity and justice to all parties concerned; therefore these presents witnesseth:

That, in consideration of the premises and mutual covenants and promises, agreements, and undertakings of the parties hereinafter set forth, the said parties hereto mutually covenant, promise, undertake, and agree to and with each other as follows, to wit: That the Belleville & Eldorado Railroad Company and the said James Hill & Company hereby covenant, promise, and undertake and agree to and with the said county of Franklin that they will refund to said county the three hundred dollars paid to Andrew D. Duff as his fee as aforesaid, and that they will pay to said Duff the one thousand dollars agreed to be accepted by him in satisfaction of said fee in the following manner: That they will deliver to — clerk of this board for cancellation one of the bonds of said county of the denomi-
122 nation of one thousand dollars when the same shall be received by them under this contract, and that they will pay all the expenses of the said trustee growing out of the trust created by said original contraact; and they do further covenant and agree to and with the said county of Franklin and with each member of said board of supervisors that they will waive and do hereby waive and release all claim for damages which they claim to have *a* against said county or against any of the members of the said board of supervisors growing out of any action of said board relative to the delivery of said bonds, and hereby waive and release all right of action either against the said county or against any of the individual members of said board growing out of the said matters; and the county of Franklin hereby promises, covenants, and undertakes and agrees to and with the said Belleville and Eldorado Railroad Company and the said James Hill & Company that the said Evansville National bank, trustee as aforesaid, shall, and the said trustee is hereby, directed to deliver to the said railroad company and the said James Hill & Company and John J. St. Clair, a member of board of supervisors of said county, on the presentation of this contract all the bonds of said county remaining in the hands of said trustee under said original contract taking their receipt for the same, and that said trustee on the delivery of said bonds under this contract shall be discharged from all responsibility as such trustee; and the said Belleville & Eldorado Railroad Company and James Hill & Company further covenant, promise, and agree to and with the said county of Franklin that when said bonds shall be so received by said railroad company the said James Hill & Company and the said John J. St. Clair under this contract said bonds shall remain in the hands of the said John J. St. Clair and shall by him be paid to the said railroad company and the said James & Hill & Company *pro rata* per mile as each mile of said road shall be completed from Benton to Duquoin and received by the said John J. St.
123 Clair as heretofore provided for by the said board of supervisors of said Franklin county.

In witness whereof the said county of Franklin has executed this

contract by the chairman of the board of supervisors and the clerk of said board under the seal of said board, and the said Belleville & Eldorado Railroad Company by its president and secretary under the seal of said company, and the said James Hill by *their* private signature and seals.

Dated this July 16th, A. D. 1879.

[SEAL.] SAMUEL HAMILTON,
Chairman of the Board of Supervisors of Franklin County, Illinois.
CHAS. A. AKIN,
[SEAL.] *Clerk of said Board.*
WILLIAM R. WARD,
[SEAL.] *President of the Belleville & Eldorado R. R. Co.*
G. B. HOBLIT,
[SEAL.] *Secretary of the Belleville & Eldorado R. R. Co.*
[SEAL.] JAMES HILL & COMPANY.

And now comes Samuel F. Buntin and offers the following resolution, which is adopted by the board and ordered of record as follows: Resolved by the board of supervisors of Franklin county, that the foregoing contract between the county of Franklin, the Belleville & Eldorado Railroad Company, and James Hill & Company be accepted on the part of said county, and that the chairman of the board and the clerk thereof sign the same on the part of said county under the seal thereof.

S. F. BUNTIN, *Mover.*

Answer of German Savings Bank of Davenport, Iowa.

Defendant avers, upon information and belief, that the said contract was executed and the bonds delivered in pursuance thereof, and it further avers that the bonds subsequently purchased and held by it were some of the same bonds referred to in said agreement, and the said Franklin county and its inhabitants thus solemnly ratified the said bonds and coupons and represented them as valid and binding, and that there was no defense or objection to said bonds and coupons, and permitted the said bonds to be de-
124 livered according to the terms of said contract and to be negotiated to this defendant and other *bona fide* purchasers for value and without notice of any defense to or objection against the validity of said bonds. Wherefore this defendant prays that as to the bonds and coupons held by it complainant's bill may be dismissed for want of equity, and that the injunction heretofore granted may be dissolved so far as the same may be applicable to the bonds and coupons held by this defendant and for costs.

THE GERMAN SAVINGS BANK
OF DAVENPORT, IOWA,
By H. H. ANDERSON, *Cashier.*

G. G. CARSTENS,
E. E. COOK,
Solicitors for said Defendant German Savings Bank, Etc.
11—1234

Subscribed in my presence by the said H. H. Anderson and by him sworn to before me this 3rd day of October, 1881.

[SEAL.] JACOB STRASSER,
Notary Public, Scott Co., Iowa.

Filed this October 27th, A. D. 1881.
JAMES F. MASON, *Clerk.*

Petition of German Savings Bank of Davenport, Iowa, for Removal to the U. S. Cir. Court.

STATE OF ILLINOIS, }
Franklin County. }

In the Circuit Court.

THE COUNTY OF FRANKLIN, ILLINOIS,
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. Akin, Clerk of the County of Franklin, Illinois; W. D. Seeber, Sheriff and Collector of the County of Franklin, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, State Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, the unknown holders of bonds of Franklin county, Illinois, and the German Savings Bank of Davenport, Iowa (a holder of certain of said bonds), Defendants.

Petition for removal to the circuit court of the United States for the southern district of Illinois.

125 To the said circuit court of Franklin county, Illinois:

Your petitioner, the German Savings Bank of Davenport, Iowa, a corporation organized and existing under the laws of the State of Illinois, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of $500; that the controversy in said cause is between citizens of different States; that the petitioner was and is a defendant to said suit as one of the unknown holders of bonds of Franklin county, and that before the filing of this petition is admitted to be heard in said cause, and filed an answer therein, and that the petitioner was at and before the time of the commencement of this suit and still is a citizen of the State of Iowa, and was at and before the time of the commencement of said suit and ever since has been and now is a private corporation duly organized and existing under the laws of the State of Iowa, having its office and principal place of business at the city of Davenport, Iowa, and that the said plaintiff, The County of Franklin, Illinois, was then and still is a citizen of the State of Illinois, being a public corporation existing for political purposes; that the defendant The Belleville & Eldorado Railroad Company was then and

still is a citizen of the State of Illinois and then was and still is a corporation duly organized and existing under the laws of the State of Illinois, and that the defendant Chas. Akin, clerk of Franklin county, Illinois, was then and still is a citizen of the State of Illinois, and that the defendant W. D. Seeber, sheriff and collector of Franklin county, Illinois, was then and still is a citizen of the State of Illinois, and that the defendant Thos. B. Needles, auditor of public accounts of the State of Illinois, was then and still is a citizen of the State of Illinois, and that the defendant W. Bayard Cutting was then and still is a citizen of the State of New York, and that the defendant James Hill was then and
126 still is a citizen of the State of Illinois, and that the defendant William H. Nye was then and still is a citizen of the State of Illinois, and that the defendant James M. Warren was then and still is a citizen of the State of Colorado; that the defendant- named as the unknown holders of bonds of Franklin county are unknown to petitioner, excepting that petitioner itself was then and still is one of the holders of some of said bonds, and it cannot, therefore, state the names or citizenship of other parties who are made defendants under the name of the unknown holders of bonds of Franklin county. Your petitioner states that in the said suit above mentioned there is a controversy which is wholly between citizens of different States and which can be fully determined as between them, to wit, a controversy between said petitioner and the said plaintiff, The County of Franklin, Illinois; that said county of Franklin issued certain bonds that have been negotiated to different parties; that petitioner, long before the commencement of this suit, purchased twenty-seven of the said bonds, each of the denomination of one thousand dollars, in good faith and for a valuable consideration and without notice of any defense or objection to the validity of any one or more of said bonds before the same came due and before any default in the payment of any interest on any one of said bonds; that by its bill in this cause the said plaintiff seeks to have this petitioner's said bonds and said coupons declared void and to have them surrendered for destruction, and to have the officers and their successors through whom said bonds and coupons should be paid enjoined from paying any part of the principal or interest of said bonds; that the controversy between the said plaintiff and petitioner as to the validity of petitioner's bonds and coupons can be wholly determined without any regard to any of the other parties of said suit, as will more fully appear by reference to the pleadings filed in said cause
127 before the filing of this petition. And your petitioner offers herewith a bond, with good and sufficient security, for its entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto. Petitioner prays this honorable court to proceed no further herein, except to make the order of the removal required by law and to accept said surety and bond and to cause the record

herein to be removed into said circuit court of the United States in and for the said southern district of Illinois.

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA,
By H. H. ANDERSON, *Cashier.*

G. G. CARSTENS,
E. E. COOK,
Solicitors for Said Bank.

STATE OF IOWA, }
County of Scott. }

I, H. H. Anderson, being duly sworn, do say that I am the cashier of the German Savings Bank of Davenport, Iowa, petitioner in the above-entitled suit; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

H. H. ANDERSON.

Subscribed by the said H. H. Anderson in my presence and by him sworn to before me this 3rd day of October, 1881.

JACOB STRASSER,
[SEAL.] *Notary Public for Scott County, Iowa.*

Filed this October 27th, A. D. 1881.

JAMES F. MASON, *Clerk.*

Bond for Removal of Cause to U. S. Circuit Court.

Know all men by these presents, that the German Savings Bank of Davenport, a corporation duly organized and existing under the laws of the State of Iowa, as principal, and Philemon L. Mitchell and Philander L. Cable of the county of Rock Island, and State of Illinois as surety are held and firmly bond unto the county of Franklin in the State of Illinois penal sum of one thou-
128 sand dollars; the payment whereof, well and truly to be made unto the said county of Franklin in the State of Illinois and assigns we bind ourselves, our successors, heirs, representatives and assigns jointly and severally firmly by these presents; yet upon the following conditions: The said corporation, the German Savings Bank of Davenport, Iowa, having petitioned the circuit court of Franklin county State of Illinois, for the removal of a certain cause therein pending, wherein The County of Franklin is plaintiff and The Belleville & Eldorado Railroad Company and others, including the German Savings Bank of Davenport, Iowa, are defendants, to the circuit court of the United States in and for the southern district of Illinois: Now if the petitioners, the German Savings Bank of Davenport, Iowa, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truely pay all costs that may be awarded by said circuit court of the United States if said court shall hold tha

said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

In witness whereof the said corporation, The German Savings Bank of Davenport, Iowa, has caused this bond to be signed by its cashier, and its corporate seal to be by him hereunto affixed; and the said sureties hereunto place their hands and seals this 10th day of October, 1881. The German Savings Bank signing this bond by its cashier and hereunto affixing its seal, at Davenport, Iowa, and the said sureties signing this bond at Rock Island.

[The German Savings Bank of Davenport, Iowa.]

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA,
By H. H. ANDERSON, *Cash.*
P. L. MITCHELL. [SEAL.]
P. L. CABLE. [SEAL.]

STATE OF ILLINOIS, }
County of Rock Island. }

Philemon L. Mitchell and Philander L. Cable, of said county, sureties named in the foregoing bonds, being duly —, each for
129 himself deposeth and says that he is a resident of Rock Island county, in the State of Illinois, and a property-holder therein; that he is worth the sum of more than one thousand dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution, and that he has property in the State of Illinois liable to execution of the value of more than one thousand dollars.

P. L. MITCHELL.
P. L. CABLE.

Subscribed in my presence by the said Philemon L. Mitchell and Philander L. Cable and by them sworn to before me this 10th day of October, A. D. 1881.

J. M. BUFORD, [SEAL.]
Notary Public.

STATE OF ILLINOIS, }
Rock Island County. }

I, Richard A. Donaldson, clerk of the county court in and for the county and State aforesaid, do hereby certify that Philemon L. Mitchell and Philander L. Cable, sureties named in the annexed bond, are each personally known to me to be residents of the county of Rock Island and State of Illinois; and I further certify that they are each worth more than the sum of one thousand dollars over and above all their debts and liabilities and exclusive of property by law exempt from execution, and that they each have property in the State of Illinois liable to execution of the value of more than one thousand dollars. In witness whereof I have hereunto affixed my hand and official seal this 10th day of October, A. D. 1881.

RICHARD A. DONALDSON, *Clerk.* [SEAL.]

Filed this October 27th, 1882.

JAMES F. MASON, *Clerk.*

Subpœna.

STATE OF ILLINOIS, }
Franklin County. }

The people of the State of Illinois to the sheriff of Franklin county, Greeting:

We command — to summons John Williams to be and ap-
130 pear before the circuit court of said county forthwith at a term thereof now being held in Benton, in said county, and the truth to speak in behalf of the county of Franklin in a cause now pending in said court, wherein The County of Franklin is plaintiff and the B. & E. R. R. Com. *et al.* defendants; and have you then and there this writ, with a return thereon showing in what manner you have executed the same.

Witness James F. Mason, clerk of said court, and the seal thereof, at his office, in Benton, in said Franklin county, this 27th day of October, A. D. 1881. [SEAL.]

JAMES F. MASON, *Clerk.*

STATE OF ILLINOIS, }
County of Franklin. }

OCTOBER 27TH, 1881.

I have duly served the within by reading the same to the within-named John William, as I am therein commanded.

W. R. JONES, *Sheriff,*
By R. M. HARRISON.

Filed in the circuit court this 28th day of October, 1881.

J. F. MASON, *Cir. Clerk.*

Petition for a Change of Venue.

STATE OF ILLINOIS, }
Franklin County. }

Of the October Term of the Franklin County Circuit Court, A. D. 1881.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.* } Chancery.

To the Honorable D. M. Browning, presiding judge at said court:

The petitioners, John M. Darr and John W. Williams, most respectfully represents unto your honor that they are members of the county board of the said county of Franklin aforesaid. Your petitioners further represents unto your honor that they are informed and verily believe that your honor has been counseled for parties in regard to the matters in controversy in this suit; that your pe-

titioners fear that your honor, on account of your former connection with the matter in controversy, has some prejudice against
131 the complainant in this case which will prevent an impartial trial of this cause. Your petitioners further represent untoo your honor that the facts on which this petition is based did not come to the knowledge of your petitioners so as to justify them in making this petition until after the commencement of the present term of this court. Your petitioners therefore prays for a change of venue in this cause, pursuant to the statute in such case made and provided.

JOHN M. DARR.
JOHN W. WILLIAMS.

STATE OF ILLINOIS, }
Franklin County. }

Of the October Term of the Franklin County Circuit Court, A. D. 1881.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE AND ELDORADO RAILROAD COMPANY *et al.* } Chancery.

John M. Darr and John W. Williams, the petitioners in the above-styled cause, being by me first duly sworn according to law, on their oaths state that the foregoing petition is true in substance and in fact; that the application for a change of venue is made with the consent of James A. Durham, the other member of said county board.

JOHN W. WILLIAMS.
JOHN M. DARR.

Subscribed and sworn to before me this 28th day of October, A. D. 1881.

JAMES F. MAON, *Clerk.*

Filed October the 28th, 1881.

JAMES F. MASON, *Clerk.*

Objections to Complainant's Application for a Change of Venue.

STATE OF ILLINOIS, }
Franklin County. }

October Term of Franklin County Circuit Court, 1881.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.* } Chancery.

Objection to complainant's application for a change of venue
132 and affidavit in support.

Now comes The German Savings Bank of Davenport, Iowa, one of

the defendants in the above-entitled action, and objects to the application for change of venue, filed on this 28th day of October, 1881, by complainant's attorney, and protests against the allowance or granting of said application for the following reasons, viz:

1st. Because on the 27th of October, 1881, this defendant filed in said cause a petition to remove the same to the circuit court of the United States for the southern district of Illinois, and filed a bond with said petition for removal, as required by statutes of the United States, and that therefore this court has no right to grant a change of venue in said action or to proceed any further therein except to order the removal of said cause.

2nd. Because it is not true that the Honorable D. M. Browning, presiding judge of said circuit court of Franklin county, Illinois, has been counseled for any of the parties to this suit in regard to any of the matters in controversy in this suit.

In support of the second ground of objection herein this defendant files herewith, and as a part hereof, the affidavit of one of its attorneys, E. E. Cook.

3rd. Because the affidavit or petition for a change of venue does not allege prejudice of the said judge, but merely avers argumentively that on account of a supposed former connection of said judge with the matter in controversy (which connection, in fact, never existed) the petitioners fear that said judge has some prejudice against complainant which will prevent an impartial trial of this cause.

4th. Because any prejudice which said judge might possibly have, and which might be supposed to disqualify him for trying said cause upon its merits, cannot disqualify him from determining upon the question as to defendant's right of removal to said circuit court of the United States so far as it may be necessary for this
133 court to determine that question.

5th. Because, in fact, no interest of the judge in this cause is shown, and none, in fact, exist.

The said defendant, not waiving any of its right to have said cause removed as prayed by it to said circuit court of the United States, and protesting and objecting that this court has no jurisdiction to make the order for a change of venue or any other order except to remove the said cause, submits these objections and affidavit.

THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA,
By E. E. COOK,
G. C. CARSTENS, *Its Solicitors.*

STATE OF ILLINOIS, }
Franklin County. }

I, E. E. Cook, being duly sworn, do say that I am one of the solicitors for German Savings Bank of Davenport, Iowa, defendant making foregoing objections; that it is not true, as I am informed and believe, that the Honorable D. M. Browning, presiding judge of the Franklin county, Illinois, circuit court, has been counseled for any of the parties in regard to the matters in controversy in this

suit. I further state that after complainant's petition for a change of venue was filed October 28th, 1881, and on said day I enquired of the said judge, Honorable D. M. Browning, if ever he had been attorney or counsel for any of the parties herein, and that he informed me that he had not been, but that he was upon the bench as such circuit judge at the time this suit was commenced, and had never been counsel for any parties in any matters involving the question of the validity of said bonds. I further understood him to say that when he was county judge of Franklin county he had got up the record in regard to issuing the bonds, and had prepared the forms of the bonds, but that he has no interest in the subject-matter of this litigation.

E. E. COOK.

134 Subscribed by the said E. E. Cook in my presence and by him sworn to before me this 28th day of October, 1881.

JAMES F. MASON, *Clerk.*

Filed this October 28th, 1881.

JAMES F. MASON, *Clerk.*

STATE OF ILLINOIS, }
County of Franklin. }

In the Circuit Court, October Term, A. D. 1881.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, CHAS. A. Akin, Clerk of the County Court of Franklin County, Illinois; William D. Seeber, Sheriff and Collector of Franklin County, Illinois; Thomas B. Needles, Auditor of Public Accounts of the State of Illinois; J. C. Smith, State Treasurer of the State of Illinois; W. Bayard Cutting, James Hill, William H. Nye, James M. Warren, the unknown holders of bonds of Franklin county, Illinois, and The German Savings Bank of Davenport, Iowa (a holder of certain of said bonds), Defendants.

Bill in chancery for injunction, etc.

TUESDAY, *October 25th, A. D.* 1881.

And now, on this day, it being the second day of this term and one of the judicial days of this October term of the Franklin county circuit court, comes the People's Savings Bank of Evansville, Indiana, as owners of two bonds of Franklin county issued to the Belleville & Eldorado Railroad Company, of the denomination of $1,000 each, by Samuel P. Wheeler, its solicitor, and makes its motion that this cause be redocketed, and the court, being duly advised, doth order that this cause be, and the same is, redocketed.

And afterwards, to wit, on the same day, comes the People's Savings Bank of Evansville, Indiana, by Samuel P. Wheeler, its solicitor, and files its petition to be allowed to defend, as holders and owners

of two of the Franklin county bonds, of the denomination of $1,000 each, issued as aforesaid.

It is therefore ordered by the court that the said People's
135 Savings Bank of Evansville, Indiana, be allowed to become defendants as owners of two of the Franklin county bonds issued to the Belleville & Eldorado Railroad Company, of the denomination of $1,000 each; and it is further ordered that the said People's Savings Bank of Evansville, Indiana, defendants as aforesaid, answer the complainant's bill herein within sixty days. Tuesday, 1st.

And now, afterwards, to wit, on the same day, comes the People's Savings Bank of Evansville, Indiana, by Samuel P. Wheeler, its solicitor, and files its petition and bond petitioning this court for transfer of this cause to the United States circuit court at Springfield, Illinois. Tuesday, 1st.

THURSDAY, *October 27th*, 1881.

Now, on this —, it being the 4th day of and one of the judicial days of this October term as aforesaid, comes the German Savings Bank of Davenport, Iowa, by E. E. Cook, its solicitor, as owners of 27 bonds of Franklin county, Illinois, issued to the Belleville & Eldorado Railroad Company, of the denomination of $1,000 each, and makes it- motion on affidavit to be permitted to defend; and the court, being fully advised, doth order that the German Savings Bank of Davenport, Iowa, have leave to file answer to complainant's bill herein.

And now, afterwards, to wit, on the same day, again comes the German Savings Bank of Davenport, Iowa, by E. E. Cook, its solicitor, and files its answer to complainant's bill herein.

Tuesday, 1st.—And now, on this day, again comes the German Savings Bank of Davenport, Iowa, — presents and files its petition and bond under the statute for removal of this cause to the United States circuit court at Springfield, Illinois.

Thursday, 1st.

FRIDAY, *October 28th*, 1881.

Now, on this day, it being the 5th day of and one of the judicial days of this October term as aforesaid, comes the complainant, by Thomas J. Layman, one of its solicitors, and makes its motion
136 and files its petition for a change of venue from Hon. D. M. Browning, presiding judge of this court of this term.

Now, afterwards, to wit, on the same day, again comes the German Savings Bank of Davenport, Iowa, by E. E. Cook, its solicitor, and files its objection to complainant's petition for change of venue; and the court, being fully advised, doth refuse to pass upon the petition of the German Savings Bank of Davenport, Iowa, for removal of this cause to the United States circuit court at Springfield, Illinois, filed herein on account of the motion and petition of complainants for change of venue — files herein; and the court doth order that the

venue of this cause be, and the same is hereby, changed from Hon. D. M. Browning, judge. Friday, 1st.

STATE OF ILLINOIS, }
Franklin County. }

I, James F. Mason, clerk of the circuit court of Franklin county, in the State aforesaid, and keeper of the records and files of said court, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the records and files in a certain cause now pending in said court, on the chancery side thereof, wherein The County of Franklin is complainant and The Belleville & Eldorado Railroad Company and others are defendants, as the same appears from the records and files of said court now in my office remaining.

In witness whereof I have hereunto set my hand and affixed the seal of said county, at Benton, this 19th day of November, A. D. 1881.

[L. S.] JAMES F. MASON, *Cir. Clerk.*

In the Circuit Court of the United States, Southern District of Illinois, January Term, A. D. 1882. In Equity.

THE COUNTY OF FRANKLIN }
vs. }
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA, and Others. }

Now comes The German Savings Bank of Davenport, Iowa,
137 one of the *the* defendants aforesaid, and enters and files herein a copy of the record in said suit, as required by law and in accordance with the conditions of its bond filed with its petition for removal.

Dec. 16th, 1881.

E. E. COOK,
G. G. CARSTENS,
Solicitors for German Savings Bank of Davenport, Iowa.

Filed, Dec. 21st, 1881.

J. A. JONES,
Clerk of the U. S. Circuit Court.

And afterwards, to wit, on the 2nd day of January, in the year of our Lord 1882, came the complainant, by Messrs. William J. Allen and Thos. J. Layman, its solicitors, and filed a written motion to remand said cause to the circuit court of Franklin county, Illinois; which said motion is in the words and figures following, to wit:

Motion of Complainant to Remand Cause to Franklin County Circuit Court.

In the Circuit Court of the United States, Southern District of Illinois, January Term, A. D. 1882.

Bill in chancery.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.*

And now comes The County of Franklin, complainant herein, by William J. Allen and T. J. Layman, its solicitors, and moves the court to remand said above-styled cause to the circuit court of Franklin county, Illinois.

WM. J. ALLEN,
THOS. J. LAYMAN,
Sol's for Compl't.

(Indorsed:) Filed January 2nd, 1882. J. A. Jones, clerk.

And afterwards, to wit, on Saturday, the 28th day of January, at the January term, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Overruling Motion to Remand Cause to State Court.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.* } In Chancery.

138 And now, on this 28th day of January, 1882, come the parties, by their counsel, and submit to the court the complainant's motion to remand this cause to the State court; and the court, having heard their allegations and being sufficiently advised in the premises, doth overrule said motion.

And afterwards, to wit, on Wednesday, the 29th day of March, in the term and year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Setting Cause before Full Bench.

COUNTY OF FRANKLIN
vs.
BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.* } In Chancery.

By consent of parties, by their solicitors, this cause is set for hearing before full bench.

Replication to Separate Answer of the German Savings Bank of Davenport, Iowa.

In the Circuit Court of the United States for the Southern District of Illinois, January Term, A. D. 1882. In Chancery.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.*

The replication of The County of Franklin, complainant, to the separate answer *to* The German Savings Bank of Davenport, Iowa, defendant.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be
139 replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready and — prove as this honorable court shall direct, and prays as in and by its said bill it has already prayed.

WILLIAM J. ALLEN,
THOMAS J. LAYMAN,
Sol's for Complainant.

(Endorsed:) Filed March the 29th, 1882. J. A. Jones, clerk.

Cause Submitted.

COUNTY OF FRANKLIN
vs.
BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.* } In Chancery.

This day came the parties, and by consent this cause is submitted on the bill, answers, and proofs. Complainant filed printed brief and argument, and leave is given to the defendants to file brief and argument by first of August next, and leave to complainant to reply by September 1st next; and on the day and year last aforesaid to wit, on the 17th day of June, A. D. 1882, the following papers, were filed in the office of the clerk of said court in said cause, to wit: "Petition of George P. Dally to be made party defendant;" "petition of the Park Banking Company to be made party defendant;" "petition of Janey Miller to be made party defendant;" "answer of the People's savings bank and others to the original bill of complaint in said cause;" "the replication to the separate answer *to* the People's savings bank," and "stipulations as to de-

fendant being *bona fide* holders, form of bonds," etc.; which said several papers are respectively in the words and figures following, to wit:

Petition of Park Banking Company to be Made Party Defendant.

In the Circuit Court of the United States for the Southern District of Illinois, June Term, A. D. 1882. In Equity.

THE COUNTY OF FRANKLIN
140 *vs.*
THE BELLEVILLE & ELDORADO RAILROAD COMPANY and Others.

To the judge of said court, in chancery sitting:

Your petitioner, The Park Banking Co. of Rockville, Indiana, respectfully shows to your honor that it is a corporation under the laws of the State of Indiana, and now is and at the time of the commencement of this suit was a citizen of the State of Indiana; that it now is and at the time of the commencement of this suit was the owner and holder of two of the bonds of Franklin county, State of Illinois, for the sum of one thousand dollars each, and that the same purport to have been issued under and by virtue of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, A. D. 1861, and that the same are numbered respectively 83 and 85; that petitioner is designated and described in said suit as an unknown holder of said bonds; that no jurisdiction over the person of your petitioner has ever been required in said cause, and that it has continuously since the commencement of this suit been a citizen of the State of Indiana aforesaid; that it has never been summoned in the aforesaid cause or served with a copy of complainant's bill filed herein or received the notice required to be sent by mail or any notice in writing of the decree entered in said cause by the circuit court of Franklin county, Illinois, from whence this cause was removed. Your petitioner therefore prays to be made a party defendant in this cause and to be heard touching the subject-matter of said suit, to the end that equity may be done petitioner in the premises, &c.

PARK BANKING CO.,
By SAMUEL P. WHEELER, *Its Sols.*

UNITED STATES OF AMERICA,
Southern District of Illinois.

Samuel P. Wheeler, being sworn, says he is solicitor for the
141 aforesaid petitioner; that the matters and things stated and set forth in the foregoing petition are true in substance and in fact, as he verily believes, and further he says nothing.

SAMUEL P. WHEELER.

Subscribed and sworn to before me by Samuel P. Wheeler the 17th day of June, A. D. 1882.

J. A. JONES, *Clerk.*

(Indorsed:) Filed June 17th, 1882. J. A. Jones, clerk.

Answer of People's Savings Bank, Thomas E. Garvin, Anthony Reiz, George P. Dally, Park Banking Company, James Miller to Original Bill.

In the Circuit Court of the United States for the Southern District of Illinois, of the June Term, A. D. 1882. In Equity.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY and Others.

The joint and several answer of The People's Savings Bank of Evansville, Indiana; Thomas E. Garvin, Anthony Reiz, George P. Dally, The Park Banking Co. of Rockville, Indiana, and Janie Miller, a part of the defendants in the aforesaid cause, to the bill of complaint filed herein.

These defendants, for answer to the said bill of complaint or to so much thereof as they are advised it is materoal for them to make answer unto, say that they have examined and read the answer of the German Savings Bank of Davenport, Iowa, filed herein, and that they hereby adopt and make the said answer their own, excepting such part as set out the number of the bonds held and owned by said German savings bank, and with respect thereto these defendants severally answer that the said People's Savings Bank of Evansville, Indiana, is the owner and the holder of two of said bonds, numbered respectively 16 and 67, purporting to have been issued under and by virtue of an act of the General Assembly entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, 1861; that the said Thomas E. Garvin is the owner and holder of one of said bonds, numbered 5, pur-
142 porting to have been issued; that the said Anthony Reiz is the owner and holder of one of said bonds, numbered 80, purporting to have been issued under the said act of February 22nd, 1861; that the said Park Banking Co. of Rockville, Indiana, is the owner and holder of two of said bonds, numbered respectively 83 and 85, purporti*gn* to have been issued under the said act of February 22nd, 1861; that the said Janie Miller is the owner and holder of two of said bonds, numbered respectively 12 and 13, purporting to have been issued under and by virtue of an act of the General Assembly of the State of Illinois entitled "An act to authorize cities and counties to subscribe stock to railroads," approved November 6th, 1849, and that the said George P. Dally is the owner of one of

said bonds, numbered 11, purporting to have been issued under the said act of November 6th, 1849 .These defendants, further answering, say that each of them severally purchased the said bonds for value and without any notice of any defense thereto long before the commencement of this suit, and that they are severally *bona fide* holders thereof within the meaning of the law; and, having fully answered, they pray to be hence dismissed, &c.

THE PEOPLE'S SAVINGS BANK OF EVANSVILLE, INDIANA,
THOMAS E. GARVIN,
ANTHONY REIZ,
GEORGE P. DALLY,
JANIE MILLER, AND
PARK BANKING CO. OF ROCKVILLE, IND.,
By SAMUEL P. WHEELER, *Their Solicitor.*

UNITED STATES OF AMERICA,
Southern District of Illinois.

Samuel P. Wheeler, being sworn, says he is solicitor for the aforesaid defendants; that the matters and things set forth in the
143 foregoing answer are true in substance and in fact as he verily believes.

SAMUEL P. WHEELER.

Subscribed and sworn to before me this 17th day of June, 1882.
J. A. JONES, *Clerk.*

(Indorsed:) Filed June the 17th, 1882. J. A. Jones, clerk. Stipulation as to *bona fide* holders and as to forms of bonds in the circuit court of the United States, southern district of Illinois, June term, 1882. In equity.

THE COUNTY OF FRANKLIN
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY and Others.

It is stipulated and agreed between the parties for the purposes of this trial as follows:

1st. That each defendant was and is at the commencement of this suit the *bona fide* holder of the bonds as set up and specified in their respective answers; that they purchased the same for value without any notice of defense.

2nd. That of the bonds involved in this case are two classes; that the copy hereto attached, marked "A," is a correct — of all of the one class and the copy hereto attached, marked "B," is a correct copy of all of the other class excepting the numbers in both cases; that the same ought to be considered by the court as evidence with

like effect as though all the original bonds were introduced in evidence.

June 17th, 1882.

WILLIAM J. ALLEN &
THOMAS J. LAYMAN,
Solicitors for Complainant.
E. E. COOK & G. G. CARSTENS,
Solicitors for the German Savings Bank of Davenport, Iowa.
CRATTY BROS. & ULRICH,
Solicitors for Rothschild Bros., John Graham, John W. Steele, and Sarah Bruyn.
SAMUEL P. WHEELER,
Solicitor for People's Savings Bank and Others.

EXHIBIT "B."

144 UNITED STATES OF AMERICA,
State of Illinois, Franklin County.

EXHIBIT "B" TO STIPULATION.

(*Form of Bond.*)

No. —. Eight per cent railroad bond.

Know all men by these presents, that the county of Franklin in the State of Illinois, acknowledges itself to be indebted to the Belleville & Eldorado Railroad Company or bearer in the sum of one thousand dollars which sum the said county for value received promises to pay said company or bearer in the city and State of New York twenty years after date (payable at any time after five years and before this bond becomes due, at the option of said county of Franklin), with interest thereon from and after the 15th day of November A. D. 1877, at the rate of 8 % per annum, payable semi-annually on the first days of January and July of each year on the presentation and surrender at the place in the said city of New York where the treasurer of the State of Illinois pays the interest and debt of said State of the coupons hereto attached as they severally become due. This bond is one of a series of one hundred of like tenor for the sum of one thousand dollars each, numbered from one to one hundred inclusive, issued under the provisions of an act of the General Assembly of the State of Illinois — "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, 1861, authorizing subscription to the capital stock of said railroad, and in accordance with the majority of votes casts at an election held in said county on the 11th day of September A. D. 1869, in conformity with the provisions of said act.

In testimony whereof the said county of Franklin has executed this bond, by the chairman of the board of supervisors, under the order of the board of supervisors of said county signing his name hereto and by the clerk of said board under the order thereof at-

testing the same and affixing hereto the seal of said county.
145 This done, at the office of the clerk of said board, this 13th day of November, A. D. 1877.

JOHN J. ST. CLAIR,
Chairman of the Board of Supervisors of Franklin County, Illinois.

[SEAL.] EVANS FITZGERRELL,
Clerk of the Board of Supervisors, Franklin County, Illinois.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November 3rd*, 1879.

I, Thomas B. Needles, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an "Act entitled An act to fund and provide for paying the railroads debts of counties, township-, cities, and towns," in force April 16th, 1869.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

T. B. NEEDLES,
Auditor of Public Accounts.

(Indorsed :) Filed June 17th, A. D. 1882. J. A. Jones, clerk.

Depositions G. G. Carstens and H. H. Andresen on Behalf of the German Savings Bank of Davenport, Iowa.

In the Circuit Court of the United States for the Southern District of Illinois.

THE COUNTY OF FRANKLIN, ILLINOIS,
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.*

Stipulations for taking depositions.

It is hereby agreed between the solicitors for the complainant and the solicitors for the German Savings Bank, one of the parties defendant in the above-entitled action, that the deposition- of H. H. Andreson, C. G. Carstens, and other officers or directors of the said German Savings Bank may be taken upon oral interrogatories, at the city of Davenport, Iowa, on the 20th day of April, 1882, before Geo. I. Osborn, a notary public in and for said county, at his office, in said city, being at number 218 Main St., commencing at
146 the hour of ten o'clock a. m. and continuing from day to day until the taking of said deposition is finished. Notice of the taking of said depositions is waived, and it is expressly understood and agreed that they may be used upon the trial of said cause the same as if regularly taken according to the rule of practice governing the taken of depositions in cases pending in the said court.

Dated this 13th day of April, 1882.

WILLIAM J. ALLEN & THOMAS J. LAYMAN,
Solicitors for Compl't.

COOK & DODGE,
Sol's for the German Savings Bank of Davenport, Iowa.

Depositions of witnesses produced, sworn, and examined in pursuance of the annexed stipulation in a certain action pending in the circuit court of the United States for the southern district of Illinois, wherein The County of Franklin, Illinois, is plaintiff and The Belleville & Eldorado Railroad Company, The German Savings Bank of Davenport, Iowa, and others are defendants, at my office, in the city of Davenport, Iowa, beginning on the 20th day of April and continuing until the 22nd day of April, as in the annexed stipulation it is agreed may be done, said depositions being taken on behalf of the said defendant, The German Savings Bank of Davenport, Iowa.

Deposition of G. G. Carstens.

G. G. CARSTENS, being duly sworn, on direct examination on behalf of the said defendant testified as follows:

By E. E. COOK:

Int. 1. State your name, age, residence, and occupation.

Ans. G. G. Carstens; fifty years old; reside in Davenport, Iowa, and am an attorney-at-law. I am in the special employment of the German Savings Bank of Davenport, Iowa.

Int. 2. State particularly what official connection, if any, you have with the said German Savings Bank of Davenport, Iowa, one of the parties defendant to the suit of Franklin County, Illinois, *vs.* The Belleville & Eldorado Railroad Company *et al.*, now pending
147 in the United States circuit court for the southern division of Illinois, and how long you have held such official position.

Ans. I am the special attorney of the German Savings Bank of Davenport, Iowa, and have — such attorney charge of all the legal business of the said bank and any other business submitted to me. I went into the employment of the bank January first, 1880, and am a salaried officer of said bank.

Int. 3. State whether or not in your capacity as special attorney for the said bank you had anything to do with passing upon and deciding questions of investments to be made by said bank, and, if so, what have been your duties in that respect since the time you became connected with the said bank in January, 1880.

Ans. Whenever there are any legal questions connected with the investments of the bank those matters are first submitted to pass my judgment upon the legality of the securities offered, and in all such cases it is my duties to investigate and examine all such proceedings, title, or other matters affecting the legality of such matter.

Int. 4. Please state the name of the president and cashier of the said German Savings Bank of Davenport, Iowa, during the year 1880.

Ans. H. Lischer was president and H. H. Andresen was cashier of said bank during 1880.

Int. 5. State whether or not you were called upon as a special attorney of said bank during the year of 1880 to confer with the officers of the bank about a proposed or contemplated investment

in certain bonds issued by the county of Franklin, Illinois; and if you state that you were so called upon you will state fully the time when you were first so consulted in reference to said bonds, and then state fully and particularly all that you did with reference to ascertaining about the validity of said bonds, and if you had any correspondence with any parties in reference thereto, or if the
148 bank had such correspondence with any parties in reference thereto, or if the bank had such correspondence that was conducted by you or came under your observation with the respect to said matters, you will please produce all original letters or telegrams received by you or the said bank in relation thereto and all copies of letters or telegrams by you or the said bank written in relation thereto and hand the same to the notary taking your deposition that he make copies of the same and attach them to your deposition, properly designated as exhibits hereto; and if the said bank purchased any bonds issued by the said county of Franklin, Illinois, you will state, so far as you have knowledge, just what bonds were bought, of whom they were purchased, what was paid for them by the said bank, and generally state all that you know in regard to the transaction of purchasing said Franklin county bonds by the said German Savings Bank of Davenport, Iowa.

Ans. In the latter part of March of the first of April, 1880, I was requested by the cashier of the bank to investigate the legality of Franklin county, Illinois, bonds, issued in favor of the Belleville & Eldorado Railroad Company by the said Franklin county, as some of the same had been offered for sale to the bank by Mr. Julius Scutt, a loan agent and broker of Davenport. Mr. Scutt, upon the request of the cashier of the bank, submitted to me a certain lot of papers bearing upon this question of the legal issue of said bonds, which papers I examined and passed upon and which I herewith produce and hand to the notary, to wit, a letter from Benson Brothers, of Davenport, Iowa, attorneys-at-law, dated February 18th, 1880, and addressed — Schutt. (See Exhibit 1.) An official certificate of Chas. A. Akin, clerk of Franklin county, Illinois, over his official signature and seal, dated February 26th, 1879, respecting the said bonds issued by the said county of Franklin, Illin-is, and offered for sale to the German Savings Bank of Davenport, Iowa.
149 (See Exhibit 2.) A copy of a dispatch sent by Benson Bros. on the 3rd day of February, 1880, to the county clerk of Franklin county, Illinois. (See Exhibit 3.) A dispatch and answer to the above from Benson Bros. to said clerk, sent by the "county clerk" to Benson Bros., dated Feb. 4th, 1880. (See Exhibit 4.) A letter from Chas. A. Akin, county clerk of said Franklin county, Illinois, dated February 5th, 1880, addressed to Benson Bros., Davenport, Iowa. (See Exhibit 5.) After I had gone over these papers to ascertain more of the particulars about the issue of the said bonds and the authority of the county to issue them, I wrote to the "auditor of public accounts" of the State of Illinois, who answered by letter stating that he had referred the matter to the secretary of state. This was by postal card dated April 7th, 1880, and on the same day I received a letter from the secretary of state enclosing to

me a certified copy of the act incorporating the Belleville & Eldorado Railroad company, approved February 22nd, 1880, which law I could not find in the general statute- of the State of Illinois, and for which I had written to the auditor of public accounts. I hand herewith a copy of my said letter to the auditor of public accounts, which is taken from my letter-press books, the original postal card in answer from the auditor of state, and the letter from the secretary of state enclosing the certified copy of said act. (See Exhibit 6.) And, further, on the 5th day of April, 1880, over the signature of the cashier of the bank, I write to the clerk of Franklin county, Illinois, a letter inquiring with reference to said bonds, a copy of which letter taken from the letter-press book of the bank I herewith produce, and the cashier of the bank received in reply to said letter a communication from said clerk of Franklin county, dated April the 8th, 1880, which I also produce. (See Exhibits 7 and 8.) With the other papers referred to above, Mr. Schutt left with me one of the said bonds issued November the 13th, 1887, which recited that it was issued by virtue of an act to
incorporate the Belleville & Eldorado Railroad Com-
150 pany, approved February 22nd, 1861. From all the statements and thus collected and before me I reached the conclusion that Franklin county, Illinois, had the proper authority to issue the bonds under this special law, some of which was offered for sale to the bank, and so reported to the cashier and board of directors of the German Savings Bank of Davenport, Iowa. On the 12th day of April, Julius Schutt brought into the bank a lot of said bonds, and upon the request of the cashier of said bank I attended personally to the transaction of the business of buying and paying for said bonds. Mr. Schutt handed to me 9 bonds of said Franklin county, Illinois, issued by virtue of the aforesaid special law, to wit, numbers 11, 12, 14, 33, 34, 35, 47, 56, and 57, which were bought by me for the bank at 99 cents on the dollar and accrued interest. The receipt was prepared by me, signed by Julius Schutt, the bonds delivered, and the money paid therefor. I herewith produce said receipt. (See Exhibit 9.) On the next day Julius Schutt offered for sale four (4) other bonds, to wit, numbers 15, 18, 45, and 46, each for $1,000.00, issued as recited therein by virtue of an act to authorize cities and counties to subscribe stock to railroad, approved November 6th, 1849. After examination of the law referred to, I reported to the cashier that in my opinion the same were legally issued and under the proper authority, whereupon the said cashier directed me to transact the business of purchasing the said bonds from Mr. Schutt as had been done the day before. I again *I* prepared a receipt, which was signed by Mr. Schutt, and which I herewith produce. (See Exhibit 10.) Next, on the 15th day of May, 1880, Mr. Julius Schutt offered for sale to the bank five (5) more bonds, bearing numbers 39, 40, 41, 42, and 43, issued by the said Franklin county, Illinois, by virtue of the general law last above mentioned, and upon direction of the cashier I bought said bonds on the same terms as
before, to wit, 99 cents on the dollar and accrued interest. A
151 receipt therefor was prepared by me, signed by the said Julius

Schutt, and the same is herewith produced. (See Exhibit 11.) On the 20th day of May, 1880, the said Julius Schutt offered for sale five other bonds, each for the sum of one thousand dollars, issued by the said county of Franklin, Illinois, in aid of the Belleville & Eldorado Railroad Company, by virtue of an act entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 23rd, 1861, these bonds bearing numbers as follows, to wit, 58, 59, 60, 62, and 66. In the same manner as before the transaction was referred to me. I bought the said bonds for the German Savings bank at 99 and one-fourth cents on the dollar, paid the money therefore to said Julius Schutt, prepared a receipt, which he signed, and which I herewith produce. (See Exhibit 12.) On the 11th of June, 1880, one bond numbered 77, issued by the said county of Franklin, Illinois, in favor of the Belleville & Eldorado Railroad Company, by virtue of the said special law above mentioned and as recited in said bond, was offered for sale by the said Julius Schutt at the said bank and bought by it at 99 and one-fourth cents with accrued interest. The business was transacted by me under direction of the cashier of said bank, a receipt was prepared by me, signed by the said Julius Schutt, and the same is herewith produced. (See Exhibit 13.) And finally, on the 24th day of June, 1880, three other bonds of the same issue under the special law, to wit, numbers 30, 39, and 63, were offered for sale by said Julius Schutt to said bank and bought at 99 and one-fourth cents on the dollar with accrued interest thereon. The whole transaction was referred to me by said cashier. I received the said bonds, paid the money therefor to Julius Schutt, prepared receipt, which was signed by Schutt, and which I herewith produce. (See Exhibit 14.) In all these transactions, so far as my recollection goes, the money was received by me from the teller of the bank upon instructions from the
152 cashier, and by me paid over to Mr. Julius Schutt, after he had signed a receipt therefor and delivered the bonds to me. I herewith hand to the notary the documents, letters, &c., above referred to by me, of which he may make copies to attach to my deposition as exhibits.

Int. 6. You may state whether or not there was any past, due, or unpaid interest upon any of the said bonds described in your last proceeding answer at the time when the bank purchased the same, so far as you know and from information which you have; state whether or not you suspected there were any past, due, and unpaid interest on said bonds.

Ans. Not any, and as far as I knew, and I had it from the letters of Chas. A. Akin, the county clerk of Franklin county, Illinois, dated April 8th, 1880, and above referred to, the interest had all been paid theretofor-.

Int. 7. You may now state what knowledge or suspicion you or, so far as you know, the officers of the said German Savings bank had, at the time of purchasing any of said bonds which have been referred to, that there *were* any invalidity or any irregularity or objection to any of said bonds.

Ans. I had none, and my report to the cashier and board of

directors of the said bank was based upon the firm opinion that the validity of the bonds were not in question, else I should not have reported in such a way to them; and, so far as I have any knowledge as to the other officers, of the bank, they had no suspicion or the least knowledge of any invalidity, illegality, or irregularity as to the issue of said bonds, since the whole matter was referred to me, and the officers of the bank, in deciding to buy these bonds, relied upon the verbal opinion by me given to them.

Int. 8. State whether or not any installment or installments of interest were paid upon the said bonds after their purchase by the said German Savings bank.

153 Ans. The first installment of interest which fell due after the bonds were purchased by the said bank was paid as provided in the said bonds.

The further examination of said witness is herewith adjourned until 11 o'clock of April 25th, 1882, at the same place.

Pursuant to adjournment as above noted, the examination of the witness, G. G. CARSTENS, was resumed at my office, at said city, at the time stated.

Int. 9. You will now state what knowledge or information, if any, you or any of the officers of the German Savings bank had at any time before the purchase of the bonds as stated above by you that there was or had ever been any litigation about the validity of those Franklin county bonds.

Ans. None whatever, so far as I was able to ascertain, and I am pretty sure that the officers of the bank had no knowledge of any litigation, sin-e the whole matter as to the legality of the bonds were left to me.

Int. 10. In answer to interrogatory five you have stated what bonds were purchased by the German Savings bank and the prices paid therefor. You will now please state whether or not the said bank has at all times since the said original purchase owned and held the said bonds and whether or not it yet owns and holds them.

Ans. The bank has owned and held the said bonds during all the time from their original purchase down to the present, and it now owns and holds them.

G. G. CARSTENS.

Subscribed by the said G. G. Carstens in my presence and by him sworn to before me this 24th day of April, 1882.

[SEAL.] GEORGE L. OSBORNE,
Notary Public, Scott County, Iowa.

Upon the conclusion of the examination of the witness, G. G. Carstens, the further examination of witnesses in this matter is adjourned until April 22nd, at 10 o'clock a. m., at the same place.

154 Pursuant to the adjournment last above mentioned, the examination of witnesses was resumed at the time and place

stated to begin, viz., at the office of Geo. L. Osborn, in the city of Davenport, Ia., at 10 o'clock a. m. of April 22, 1882.

Deposition of H. H. Andresen.

H. H. ANDRESEN, being produced, was duly sworn on behalf of the defendant, the said German Savings Bank of Davenport, Iowa, and upon direct examination by E. E. COOK, Esq., testified as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. H. H. Andresen; age, 56; am a resident of Davenport, Iowa, and am cashier of the German Savings bank of said city.

Int. 2. You may state whether or not in the year 1880 and previous thereto you were cashier of the German Savings Bank of Davenport, Iowa, and whether or not you now fill such position.

Ans. In 1880 and previous thereto I was cashier of the said bank and am now filling such position.

Int. 3. What connection, if any, did Mr. G. G. Carstens have with the bank in 1880, and what connection, if any, has he with it now?

Ans. In 1880 he was the attorney of the bank and is now such attorney.

Int. 4. You may state whether or not during the year 1880 you and the board of directors of the said bank considered the question of making any investment in the bonds of Franklin county, Illinois. If so, state fully and particularly all that you did with reference to ascertaining about the validity of said bonds; and if you or any one of — for the said bank had any correspondence with any parties in reference to the said bonds you will please refer to the same, whether letters or telegrams or both, and if they are the same as those submitted by G. G. Carstens, whose deposition has been taken in this matter, and copies of which letters and telegrams are attached
155 to his said deposition, you will please refer to and examine the same and state whether or not you read them during the time the validity of said bonds were under consideration, and before the purchase of said bonds, and whether or not those letters and telegrams were submitted to the board of directors, and you may state generally all that was done in relation to the purchase of said bonds by the bank, describing the particular bonds that were purchased.

Ans. It was, I think, in February of the year 1880 that certain bonds of the county of Franklin, Illinois, were offered to us by Mr. Julius Schutt, of this city, and we considered the question whether or not to buy them. We came to the conclusion that we would buy them at the prices offered, viz., 99 cents, and referred the matter to our attorney as to the legality and validity of the bonds. I have examined and read all the letters and documents referred — in the deposition of Mr. Carstens, and recognize them as the same correspondence and original documents which were submitted to me, as cashier of the said bank, and to the board of directors of the bank in 1880, before the purchase of said bonds, and upon the strength of which and the opinion of our attorney that the bonds were valid

we purchased them. Upon the receipt of the verbal report of Mr. Carstens, our attorney, that he considered the bonds legally issued, we ordered the teller to pay the amounts of the purchase-money upon the order of our said attorney and upon the receipts of the bonds. Mr. Carstens, as special attorney of the bank, having special charge of the matter, attended to the details of the transaction, and I, as cashier, and the board of directors relied upon the judgment and advise of our said attorney in the matter. We also examined the bonds themselves and the recitals therein contained. I have read the entire deposition of Mr. G. G. Carstens taken before Geo. L. Osborn, as commissioner, on the 20th and 21st day of April, 1882,
156 and his answer to direct interrogatory number five propounded shows fully and — detail the documents which I have referred to and the numbers and description of the bonds of Franklin county, Illinois, which were purchased by the bank, the dates of purchase, the prices paid therefor, and all the particulars in reference thereto, and I state that, having carefully read the said answer to interrogatory five, I adopt all the statements thereof as a part of this my answer to this interrogatory, the same as if I repeated the same in detail in this answer.

Int. 5. You may state whether or not there were any past-due and unpaid interest upon any of the said bonds of Franklin county, Illinois, purchased by the said German savings bank up to the time when the said bank purchased the same, so far as you know; or, from information which you had, state whether or not you had any suspicion that there were any past-due and unpaid interest on said bonds.

Ans. We understood at the time that the interest was paid when due. There were no past-due and unpaid coupons attached to the bonds when we bought them, nor *we* did we have any suspicion there was any past-due and unpaid interest on said bonds. On the contrary, I was advised by Chas. A. Akin, the county clerk of said Franklin county, that the interest had all been paid prior to the time we purchased said bonds.

Int. 6. You may state what knowledge or suspicion you or any of the officers of the bank, so far as you know—of the said German savings bank—had at the time of purchasing said bonds that there were any invalidity, irregularity, or objection to any of the said bonds so purchased by your bank.

Ans. We had no knowledge of any invalidity, irregularity, or objection to the said bonds of Franklin county, Illinois, and if we had had any suspicion we never would have purchased them.

Int. 7. State whether or not any installment or installments
157 of interest were paid upon the said bonds after their purchase by the said German Savings Bank of Davenport, Iowa.

Ans. The first installment of interest due after the purchase of said bonds by the bank was paid when due, as provided in the said bonds.

Int. 8. You may state what, if any, knowledge you or, so far as you know, any of the officers of the German savings bank had at the time or before the time of the purchase of these bonds, as stated

by you above, that there was any or had ever been any litigation about the validity of these Franklin county, Illinois, bonds.

Ans. We had no knowledge of any litigation about the validity of the Franklin county bonds.

Int. 9. You will please state whether or not at all time- since the purchase of the said bonds by the German savings bank the said bank has owned and held the said bonds, and whether it is now the owner and holder and actual possessor of the said bonds.

Ans. The German savings bank has held and owned and does at the present time own and hold the said bonds. They have been in actual possession of the bank ever since their purchase, and are now in the actual possession of the said bank.

H. H. ANDRESEN.

Subscribed by the said H. H. Andresen in my presence and by him sworn to before me this 24th day of April, 1882.

[L. S.] GEO. L. OSBORN,
Notary Public, Scott Co., Ia.

STATE OF IOWA, }
County of Scott. }

I, Geo. L. Osborn, notary public in and for said county, do hereby certify that, in pursuance of the stipulation between the attorneys to this action hereto attached, I caused to appear before me, at my office, in the city of Davenport, Iowa, on the 20th day of April, 1882, G. G. Carstens and H. H. Andresen, who, being duly sworn, their evidence was reduced to writing by me and was duly
158 read over by the said witnesses and sworn to before me on this 24th day of April, 1882. The examination of said witness, G. G. Carstens, was commenced on the 20th of April, 1882, but was not concluded until the 21st, and the examination of the witness, H. H. Andresen, was commenced and completed on the 22nd day of April, 1882. I further certify that E. E. Cook appeared on behalf of the defendant The German Savings Bank, one of the defendant-, and conducted the examination in behalf of the said defendant, but no counsel appeared on behalf of the plaintiff to cross-examine said witnesses, the foregoing depositions being taken in a certain action pending in the circuit court of the United States for the southern division of Illinois, wherein The County of Franklin, Illinois, is plaintiff, and The Belleville & Eldorado Railroad Company, The German Savings Bank of Davenport, Iowa, and others are defendants, on behalf of the defendant The German Savings Bank of Davenport, Iowa.

[L. S.] GEORGE L. OSBORN,
Notary Public, Scott County, Iowa.

Commissioner's fee, $12.00, paid by The German Savings Bank, d'f't.

The following are the exhibits referred to in the deposition of G. G. Carstens, Esq.

GEO. L. OSBORN, *N. P.*

EXHIBIT 1.

Exhibit one to Deposition of G. G. Carstens.

DAVENPORT, IOWA, 2ND, 18, 1880.

Julius Schutt, Esq., city.

DEAR SIR: You ask us what we know of the Franklin county, Illinois, eight per cent. bonds issued to the Belleville & Eldorado Railroad Company to pay for stock in said railroad. In reply we would say that we have owned some of these bonds and consider them a good investment. Before buying we looked into the matter and were satisfied that the bonds were legally issued and regular in every way. They were given for good and valid considera-
159 tion. The road is built t-rough the country, is in operation, and has issued two hundred thousand dollars in stock to said Franklin county. The interest has always been promptly met. Under the law the assessment for interest is made by State auditor and paid by him. The bonds are registered in the office of the auditor of State, as appears on back of bonds. Messrs. Nelson & Noel, bankers, St. Louis, bought $40,000 of these bonds, and had the proceedings of the county official carefully examined and the entire proceedings relative to the issue of the bonds passed upon by able and competent attorneys, who pronounced the bonds regular and legal in every way. Messrs. Nelson & Noel are friends of ours, as well as business correspondents, and in conversation with our Erastus A. Benson, while in St. Louis the other day, gave him the facts in the case substantially as they are briefly given above. The bonds have greatly increased in value since the completion of the road, and we consider the bonds a good investment at 102 to 105 and interest. If this can be of any use to you in negotiating your bonds, you are at liberty to use it.

Yours respectfully, BENSON BROS.

EXHIBIT 2.

Exhibit 2 to Deposition of G. G. Carstens.

BENTON, ILL., *February 26th*, 1879.

SIRS: I, Chas. A. Akin, clerk of the county court of Franklin county, Illinois, do hereby certify concerning certain bonds next below described, to wit:

Issued by Franklin Co., Ill.
Date: Nov. 13, 1877.
Number: 150.
Size: $1,000.
Int. rate: 8%.
Coupons payable, where: New York.
Coupons payable, when: July & January.
Bonds mature: Nov. 13th, 1897.
Reg. with State auditor or not: 75 reg., 75 not reg; 1st of each year.

160 That said bonds are issued under authority granted by two acts of the legislature of Illinois—first, $100,000 under an act entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, 1861, and $50,000 under an act authorizing counties and cities to subscribe stock to roads, approved Nov. 6th, 1849—and that at a popular election held in conformity to the said acts, upon the 11th day of September, 1869, the issue of $200,000 worth of said bonds to the Belleville & Eldorado Railroad Company for the purpose of paying for $200,000 of the capital stock of said railroad company subscribed by said county was ordered by an official return of 1,238 votes in the affirmative and 389 votes in the negative. I further certify that the value of taxable property as returned for assessment in the year 1878 is $1,315,369; that the cash value is about $2,600,000; the value at which it is held is about $3,900,000; that the total bonded debt of said county, including the bonds issued ($150,000) by virtue of said election is $174,000; that the floating debt of said county is small and provided for by the levy of 1878; that the population is about 16,000 souls. I further certify that the said bonds are duly authenticated by the signature of the proper officers, and that their issue is regular and formal as by law provides.

[Seal of the County Clerk.]

CHAS. A. AKIN,
County Clerk.

EXHIBIT 3.

Exhibit 3 *to Deposition* to *G. G. Carstens.*

DAVENPORT, 2ND, 3, 1880.

To County Clerk Benton, Franklin County, Ill.:

Do you consider the Franklin county railroad bonds legal and regular in every respect? Please telegraph at our expense.

BENSON BROS.

EXHIBIT 4.

Exhibit 4 *to Deposition of G. G. Carstens.*

161 BENTON, ILL., *Feb. 4th*, 1880.

To Benson Bros:

I regard the Franklin county railroad bonds strictly legal and regular — every respect.

——— ———,
County Clerk.

EXHIBIT 5.

Exhibit 5 *to Deposition* to *G. G. Carstens.*

BENTON, *Feb. 5th*, 1880.

Benson Bros., Davenport, Iowa.

DEAR SIRS: Yours of the 2nd–3 is at hand, and in reply will say

that I regard the issue of railroad aid bonds by Franklin county, Illinois, to the Belleville & Eldorado Railroad Company as strictly legal and regular. I have carefully scrutinized every act of the county authorities of this county relative to the issuance of said bonds and find the acts of said authorities to conform in every respect with the laws of our State and the vote of our people. I base my opinion upon the following facts and reasons: 1st. The issue of said bonds was authorized by a vote of the majority of the voters of the county at an election held for the purpose. 2nd. The order of court authorizing said issuance was based upon said vote. 3rd. The proposition embodied in said order was kept open by various orders of the said court, from time to time, granting extensions of the time for beginning and completing said road. 4th. The bonds were actually issued in accordance with an order of the board of supervisors of said county authorizing said subscription of stock. 5th. The bonds have all been delivered to the builders of said road in good faith, strictly in compliance with the terms of said contract entered into by and between the said county of Franklin and said railroad company. 6th. The interest on said bonds have been regularly paid without process or complaint. I have been at great pains to arrive at the above facts, and my charge for same, for which I will expect by return mail.

Very respectfully yours,

CHAS. A. AKIN,
County Clerk.

End of Exhibit 5.

162 EXHIBIT 6TH.

Exhibit 6 to Deposition of G. G. Carstens.

DAVENPORT, IOWA, *April 5th*, 1880.

Auditor of public accounts, Springfield, Ill.

DEAR SIR: Some bonds issued by Franklin county under provisions of an act of the General Assembly of the State of Illinois, entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved Feb. 22nd, 1861, have been offered for sale to the above bank, the special counsel of which I am. Please have the kindness to send me a copy of said act, and I shall remit whatever charges there may be by return mail.

Respectfully yours, G. G. CARSTENS.

STATE OF ILLINOIS, AUDITOR'S OFFICE,
SPRINGFIELD, 5TH, 7, 1880.

DEAR SIR: Yours of 5th inst. received. I have referred the same to the hon. secretary of state, who is custodian of the laws, and will send you certified copy as requested.

Very respectfully, T. B. NEEDLES, *Aud.*

STATE OF ILLINOIS, SECRETARY'S OFFICE,
SPRINGFIELD, *April 7th*, 1880.

G. G. Carstens, Esq., Davenport, Iowa.

DEAR SIR: Enclosed please find certified copy of "An act to incorporate the Belleville & Eldorado Railroad Company." The fee for the same is $2.50.

Ve-y truly, GEORGE H. HARLOW,
Sec. of State.

End of Exhibit 6.

EXHIBIT 7.

Exhibit 7 to Deposition to G. G. Carstens.

DAVENPORT, IOWA, *April 5th*, 1880.

163 Chas. A. Akin, Esq., Benton, Ill.:

Some bonds of Franklin county issued in aid to the Belleville & Eldorado Railroad Company on the 13th day of November, 1877, have been offered us for sale. The bonds are issued under an act to incorporate the Belleville & Eldorado Railroad Company, approved Feb. 22nd, 1861. We want a certified copy of said act, and you would do us a great favor by sending us the same as soon as possible. Any charges we will remit directly. Further, could you tell us whether they are salable at your county, and what price used to be paid for them? Please answer and oblige,

Yours truly, H. H. ANDRESEN, *Cashier.*

EXHIBIT 8.

Exhibit 8 to Deposition of G. G. Carstens.

BENTON, *April 8th*, 1880.

Mr. H. H. Andresen, Davenport, Iowa.

DEAR SIR: Your letter of inquiry in reference to bonds of Franklin county of date of April 5th is at hand, and in reply will say that the bonds of said denomination are considered good capital here, and while but few of them have been sold inside of the county they have always brought a good price and are now virtually at par here. I have investigated the price of them to-day and find them held at 98 cents. This — the most reliable information I can obtain here. The interest is amply provided for and is being readily paid, which has had a tendency to enhance their value. My charges for the examination and report I have made to-day is $3, which you will please forward as you indicate.

Yours, &c., CHAS. A. AKIN,
County Clerk.

End of Exhibit 8.

EXHIBIT 9.

164 *Exhibit 9 to Deposition of G. G. Carstens.*

DAVENPORT, IOWA, *April 12th*, 1880.

Sold this day to the German Savings Bank of Davenport nine bonds of Franklin county, Illinois, issued November 13th, 1877, in aid of the Belleville & Eldorado Railroad Company, at $1,000 each, to wit, No. 11, 12, 14, 33, 34, 35, 47, 56, and 57; total, $9,000; at 99%, $8,910; accrued interest at 8%, from January 1st to April 12th, 1880, $202 ($9,112) nine thousand one hundred and twelve dollars, the receipt of which I hereby acknowledge.

JULIUS SCHUTT.

End of Exhibit 9.

EXHIBIT 10.

Exhibit Ten to Deposition of G. G. Carstens.

DAVENPORT, IOWA, *April 13th*, 1880.

Sold to the German savings bank the following Franklin county, Illinois, railroad bonds, issued November 13th, 1877, under "AN act to authorize cities and counties to subscribe stock to railroads," approved November the 6th, 1849, to wit, numbers 15, 18, 45, and 46, each for $1,000, amounting to four thousand dollars, at 99 cents $3,960 00

Accrued interest, 8%, from January 1st to April 13th, 1880 ..... 90 65

$4,050 65

four thousand and fifty dollars and sixty-five cents, the receipt of which I hereby acknowledge.

JULIUS SCHUTT.

EXHIBIT 11.

Exhibit 11 to Deposition of G. G. Carstens.

DAVENPORT, IOWA, *May 15th*, 1880.

Sold this day to the German Savings Bank of Davenport, Iowa, bonds of Franklin county, Illinois, issued November 13th, 1877, in aid of the Belleville & Eldorado Railroad Company, at $1,000 each, to wit, No. 39, 40, 41, 42, and 43; total for $5,000,

165 at 99% $4,950 00

Accrued interest at 8% from January 1st to April 15th, 1880 ..... 150 00

$5,100 00

five thousand one hundred dollars, the receipt of which I hereby acknowledge.

JULIUS SCHUTT.

EXHIBIT 12.

Exhibit 12 *to Deposition of G. G. Carstens.*

DAVENPORT, IOWA, *May* 20*th*, 1880.

Sold this day to the German savings bank the following bonds of Franklin county, issued November 13th, 1877, in aid of the Belleville & Eldorado Railroad Company, to wit, No. 58, 59, 60, and 62 and 66, five bonds, at one thousand dollars.

$5,000, at 99 and one-fourth	$4,962 50
8% interest from January 1st to May 20th, 1880	154 50
	$5,117 00

five thousand one hundred and seventeen dollars, the receipt whereof I hereby acknowledge.

JULIUS SCHUTT.

EXHIBIT 13.

Exhibit 13 of *Deposition* to *G. G. Carstens.*

DAVENPORT, IOWA, *June* 11*th*, 1880.

Sold to the German Savings Bank of Davenport, Iowa, $1,000 railroad bonds of Franklin county, Illinois, No. 77, at 99 & one-fourth per cent. $992 50
Interest at 8%, January 1st, 1880, to June 11, 1880 35 55

$1,028 05

which amount was paid to me this day.

JULIUS SCHUTT.

EXHIBIT 14.

Exhibit 14 *to Deposition of G. G. Carstens.*

DAVENPORT, IOWA, *June* 24*th*, 1880.

166 Sold to the German Savings Bank of Davenport, Iowa, 3 bonds of Franklin county, Illinois, to aid the Belleville & Eldorado Railroad Com., for $1,000 each, to wit:

No. 30, 39, and 63, at 99 & ¼ cents	$2,977 50
With 8% interest	" 115 30
	"3,092 80

three thousand and ninety-two — and eighty cents, the receipt whereof I hereby acknowledge.

JULIUS SCHUTT.

(Indorsed:) Filed May 4th, 1882. J. A. Jones, clerk. Opened at request of S. P. Wheeler, Esq., June 16th, 1882. J. A. Jones, clerk.

Final Decree.

COUNTY OF FRANKLIN *vs.* THE BELLEVILLE & ELDORADO RAILROAD COMPANY, George P. Dally, John Graham, German Savings Bank of Davenport, Iowa; Anthony Reiz, and George W. Steele, Sarah E. Bruyn, People's Savings Bank of Evansville, Park Banking Co. of Rockville, Indiana; Solomon Rothschild, Benjamin Rothschild, and Thomas E. Garvin.	In Chancery.

This cause having been submitted to the court at the June term, A. D. 1882, on the bill, answers, replications, and cross-bills, answers, and replications thereto, and proofs, and upon the printed briefs and arguments of complainants and defendants, and the court, having had the same under advisement, and being now fully advised concerning the premises and all the matters and things so submitted and involved, doth decree, find, and order as follows: As to bond number eleven (11), held by George P. Dally, and bonds numbers twelve and thirteen, held by Janie Miller, and bond number nineteen (19), held by John Graham, and bonds Nos. fifteen (15)
167 and eighteen (18), thirty-nine (39), forty-one (41), forty-two (42), forty-three (43), forty-five (45), and forty-six (46), held by the German Savings Bank of Davenport, Iowa, for one thousand dollars each, and of the series of bonds in complainant's bill described and purporting on their face to have been issued under the provisions of the railroad act of November 6th, 1849, the court doth find that said bonds and the coupons thereto attached were issued without authority of law, and are therefore void, and doth order and decree as to such holders of said bonds the injunction heretofore issued herein be made perpetual, without prejudice, however, to the rights of holders of any of said series of bonds purporting on their face to have been issued under the said act of 1849, who are not parties to this suit, complainant's bill as to any of the holders of said series of bonds not parties as aforesaid being hereby dismissed without prejudice; and as to bond number eighty (80), belonging to Anthony Reiz; bond number ninety-eight (98), belonging to George W. Steele; bonds numbers ninety-six (96) and ninety-seven (97), belonging to Sarah E. Bruyn; bonds numbered *numbered* sixteen (16) and sixty-seven (67), belonging to the People's Savings Bank of Evansville; bonds Nos. eighty-three (83) and eighty-five (85), belonging to the Park Bank Company of Rockville, Indiana; bonds Nos. nine (9), thirteen (13), eighteen (18), twenty (20), twenty-one (21), forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), and fifty-three (53), belonging to Solomon Rothschild and Benjamin Rothschild, parties doing business under the name of Rothschild & Bro.; bond No. five (5), belonging to Thomas E. Garvin, and bonds Nos. eleven (11), twelve (12), fourteen (14), thirty (30), thirty-three (33), thirty-four (34), thirty-five

(35), thirty-nine (39), forty-seven (47), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-two (62), sixty-three (63), sixty-six (66), and seventy-seven (77), belonging to the German Savings Bank of Davenport, Iowa, purporting on their face to be of the series issued under the charter of said Belleville &
168 Eldorado Railroad Company, approved Feb. 22nd, A. D. 1861, the court doth decree in favor of said defendants, the said several respective holders thereof, and that the said several bonds and the coupons thereof are valid and legal obligations against the county of Franklin; and as to said last-mentioned series of said bonds and coupons thereunto attached, as held as aforesaid, the court doth decree that the injunction issued in this cause be dissolved and complainant's bill be dismissed for want of equity.

And it is further ordered, adjudged, and decreed that the said defendants have and recover against the said county of Franklin their costs herein, to be taxed, and have process to collect the same; no docket fee to be taxed.

And afterwards, to wit, on Friday, the 12th day of June, at the June term, in the year last aforesaid, came The German Savings Bank of Davenport, Iowa, one of the defendants in said cause, by E. E. Cook, Esq., its solicitor, and filed its petition for an appeal to the Supreme Court of the United States and for a transcript of the records; which said petition is in the words and figures following, to wit:

Petition of The German Savings Bank of Davenport, Iowa, for Appeal and for a Transcript of Record.

In the Circuit Court of the United States, Southern District of Illinois.

THE COUNTY OF FRANKLIN (IN THE STATE OF ILLINOIS)
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY, THE GERMAN SAVINGS BANK OF DAVENPORT, IOWA, *et al.*

The above-named defendant, The German Savings Bank of Davenport, Iowa, a corporation organized and existing under the laws of Iowa, conceiving itself to be aggrieved by the final decree entered as of the date of July 3rd, 1883, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and it prays that this its appeal may be allowed and that a transcript of the record, proceedings, and evidence in the cause,
169 duly authenticated, may be sent to the Supreme Court.

E. E. COOK,
Solicitor for said Defendant, The German Savings Bank of Davenport, Iowa.

(Indorsed:) Filed June 12th, 1885. J. A. Jones, clerk.

And thereupon, on the same day, in the term and year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Granting Appeal.

COUNTY OF FRANKLIN *vs.* THE BELLEVILLE & ELDORADO RAILROAD COMPANY *et al.*	In Chancery.

This day comes The German Savings Bank of Davenport, Iowa, by E. E. Cook, Esq., it solicitor, and on its motion an appeal to the Supreme Court of the United States is allowed on its entering into bond to the county of Franklin in the penalty of one thousand dollars and conditioned as the law directs; and thereupon, on the day and year last aforesaid, the said defendant, The German Savings Bank of Davenport, Iowa, filed its bond for appeal in said cause in the words and figures following:

Bond for Appeal.

Circuit Court of the United States for the Southern District of Illinois.

Know all men by these presents that we, The German Savings Bank of Davenport, Iowa, a corporation organized and existing under the laws of the State of Iowa, and C. H. Deer and Morris Rosenfield, of the county of Rock Island and State of Illinois, are held and firmly bound unto the county of Franklin, in the State of Illinois, in the sum of one thousand dollars, to be paid to the said county of Franklin; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 9th day of June, 1885.

Whereas the above-named *the* The German Savings Bank of Davenport, Iowa, is about to prosecute an appeal to the
170 Supreme Court of the United States to reverse the judgment and decree rendered in a certain action at the June term, 1883, by the circuit court of the United States for the southern district of Illinois, in which action The County of Franklin (in the State of Illinois) was complainant and The German Savings Bank of Davenport, Iowa, and others were defendants, whereby the validity of nine certain bonds owned by the said bank and executed by the said county of Franklin was denied:

Now, therefore, the condition of this obligation is such that if the above-named The German Savings Bank of Davenport, Iowa, shall prosecute its said appeal to effect and answer all costs and damages rendered and to be rendered in case the decree shall be affirmed, or if it shall fail to make good its said appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

In witness whereof the said corporation, The German Savings Bank of Davenport, Iowa, has caused this instrument to be signed by its cashier and its corporate seal annexed, and the said C. H. Deer and Morris Rosenfield have signed and sealed this instrument.

[L. S.] THE GERMAN SAVINGS BANK
OF DAVENPORT, IOWA,
By H. H. ANDRESEN, *I-s Cashier.*
C. H. DEER. [SEAL.]
MORRIS ROSENFIELD. [SEAL.]

STATE OF ILLINOIS, }
County of Rock Island. }

We, C. H. Deer and Morris Rosenfield, being duly sworn, depose and say, each for himself, that he is worth the sum of more than twenty-five thousand dollars over and above all his just debts and liabilities.

C. H. DEER.
MORRIS ROSENFIELD.

Subscribed by the said C. H. Deer and Morris Rosenfield in my presence and by them severally sworn to before me this 9th day of June, 1885.

[L. S.] J. S. GILMORE,
Notary Public, Rock Island Co., Illinois.

171 STATE OF ILLINOIS, }
County of Rock Island. }

I, Richard A. Donaldson, clerk of the county court of Illinois for the county of Rock Island, do hereby certify that I personally know C. H. Deer and Morris Rosenfield, whose names are subscribed to the foregoing bond, and am acquainted with their financial standing, and I regard them as amply sufficient for the amount of said bond, and were the said bond in any proceeding in this court offered to me I should accept and approve the same unqualifiedly.

Given under my hand and official seal at Rock Island, Illinois, this 9th day of June, A. D. 1885.

[L. S.] RICHARD A. DONALDSON,
Clerk of the County Court.

I approve the foregoing bond and the sufficiency of the sureties thereto.

S. H. TREAT,
District Judge.

(Indorsed:) Filed June the 12th, 1885. J. A. Jones, clerk.

UNITED STATES OF AMERICA, }
Southern District of Illinois. }

I, John A. Jones, clerk of the circuit court of the United States for said district, do hereby certify the foregoing to be a true and complete copy of all the papers filed and proceedings thereon had

in a certain cause lately determined in said court, wherein The County of Franklin, Illinois, is complainant and The Belleville & Eldorado Railroad Company, George P. Dally, John Graham, German Savings Bank of Davenport, Iowa; Anthony Reiz, George W. Steele, Sarah B. Bruyn, People's Savings Bank of Evansville, Indiana; Park Banking Company of Rockville, Indiana; Solomon Rothschild, Benjamin Rothschild, and Thomas E. Garvin were defendants, as the same now appears from the records and files of said court in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Springfield, in said district, this 31st day of August, in the year of our Lord 1885, and of the Independence of the United States the 110th year.

172 { The Seal of the Circuit Court of the United States for the Southern District Illinois. }

JOHN A. JONES, *Clerk.*

My fees for making this record (one hundred and three dollars and fifty-five cents, $103.55) were paid by E. E. Cook, Esq., solicitor for German Savings Bank of Davenport, Iowa.

JOHN A. JONES, *Clerk.*

In the Circuit Court of the United States, Southern District of Illinois.

THE COUNTY OF FRANKLIN, IN THE STATE OF ILLINOIS, Complainant,
vs.
THE BELLEVILLE & ELDORADO RAILROAD COMPANY & THE GERMAN Savings Bank of Davenport, Iowa, *et al.*, Defendants.

UNITED STATES OF AMERICA, *ss:*

To The County of Franklin, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2nd Monday in October, 1885, pursuant to an appeal allowed to and taken by the German Savings Bank of Davenport, Iowa, from the decree rendered in the above-entitled cause in the said circuit court of the United States, southern district of Illinois, as of date July 3rd, 1883, to show cause, if any there be, why the said decree should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel H. Treat, district judge of the district court of the United States for the southern district of Illinois, this 12th day of June, in the year of our Lord 1885.

S. H. TREAT,
District Judge.

STATE OF ILLINOIS, *Franklin County,* } *ss:*

I, William R. Jones (sheriff of Franklin county, Illinois), being duly sworn, do say upon my oath that on the 14th day of July,

1885, in the said county of Franklin, in the State of Illinois, I served the attached citation upon Thomas J. Layman, the solicitor for the said County of Franklin, complainant, by reading the same to him and by delivering to him a true copy thereof.

173 WILLIAM R. JONES, *Sheriff.*

Subscribed by the said William R. Jones in my presence and by him sworn to before me this 14th day of July, 1885.

[Seal Circuit Court, Franklin County, Illinois.]

WILLIAM F. SPILLER, *Cir. Clerk.*

(Endorsed:) U. S. circuit court, southern district Illinois. The County of Franklin *vs.* The Belleville & Eldorado Railroad Company *et al.* Citation on appeal of German savings bank. Sheriff's fee, $2, paid by E. E. Cook.

Endorsed on cover: S. Illinois C. C. U. S. No. 977. The German Savings Bank of Davenport, Iowa, appellant, *vs.* The County of Franklin, Ill. Filed September 24th, 1885. Mandate from Supreme Court of United States of America.

UNITED STATES OF AMERICA, *ss:*

The President of United States of America to the honorable judges of the circuit court of the United States for the southern district of Illinois:

Be*o*fre you or some of you, in a cause between The County [L. S.] of Franklin, in the State of Illinois, complainant, and The Belleville & Eldorado Railroad Company, George P. Dally, John Graham, The German Savings Bank, Davenport, Iowa, Anthony Reiz, George W. Steele, Sarah E. Bruyn, The People's Savings Bank of Evansville, Indiana, The Park Banking Company of Rockville, Indiana, Solomon Rothschild, and Thomas E. Garvin, defendants, wherein the decree of the said circuit court entered in said cause on the 3rd day of July, A. D. *L*883, is in th- following words, viz: "This cause having been submitted at the June term, A. D. *L*882, on the bill, answers, and replications and cross-bills, answers, and replications thereto, and proofs, and upon the printed brief and arguments of complainants and defendants, and the court, having had the same under advisement and being now fully advised concerning the premises and of all the 174 matters and things so submitted and involved, doth decree, find, and order as follows: As to bond No. eleven (11), held by George P. Dally, and bonds Nos. twelve (12) and thirteen (13), held by Janie Miller, and bond No. nineteen (19), held by John Graham, and bonds Nos. fifteen (15), eighteen (18), thirty-nine (39), forty (40), forty-one (41), forty-two(42), forty-three (43), forty-five (45), and forty-six (46), held by the German Savings Bank of Davenport, Iowa, for one thousand dollars each, and of the series of bonds in complainant's bill described and purporting on their face to have been issued under the provisions of the railroad act of November 6th, 1849, the court doth find that said bonds and the coupons

thereto attached were issued without authority of law, and are therefore void, and doth order and decree as to such holders of said bonds the injunction heretofore issued herein be made perpetual, without prejudice, however, to the rights of holders of any of said series of bonds purporting on their face to have been issued under the said act of 1849, who are not parties to this suit, complainant's bill, as to any of the holders of said series of bonds not parties as aforesaid, being hereby dismissed without prejudice; and as to bond No. eighty (80), belonging to Anthony Reiz; bond No. ninety-eight (98), belonging to George W. Steele; bonds Nos. ninety-six (96) and ninety-seven (97), belonging to Sarah E. Bruyn; bonds Nos. sixteen (16) and sixty-seven (67), belonging to the People's Savings Bank of Evansville; bonds Nos. eighty-three (83) and eighty-five (85), belonging to the Park Banking Company of Rockville, Indiana; bonds Nos. nine (9), thirteen (13), eighteen (18), twenty (20), twenty-one (21), forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), and fifty-three (53), belonging to Solomon Rothschild and Benjamin Rothschild, parties doing business under the name of Rothschild and Bros.; bond No. five (5), belonging to Thomas E. Garvin, and bonds Nos. eleven (11), twelve (12), fourteen (14), thirty (30), thirty-three (33), thirty-four (34), thirty-five (35), thirty-nine (39),
175 forty-seven (47), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-two (62), sixty-three (63), sixty-six (66), and seventy-seven (77), belonging to the German Savings Bank of Davenport, Iowa, purporting on their face to be of the series issued under the charter of said Bellevill- & Eldorado Railroad Company, approved February 22nd, A. D. 1861, the court doth decree in favor of said defendants, the said several respective holders thereof, and that the said several bonds and the coupons thereof are valid and legal obligations as against the county of Franklin; and as to the said last-mentioned series of said bonds and coupons thereto attached, as held as aforesaid, the court doth decree that the injunction issued in this cause be dissolved and complainant's bill be dismissed for want of equity; and it is further ordered, adjudged, and decreed that the said defendants have and recover against the said county of Franklin their costs herein to be taxed, and have process to collect the same; no docket fee to be taxed—

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the German Savings Bank of Davenport, Iowa, agreeable to the act of Congress in such case made and provided, fully and at large appears; and whereas, in the present term of October, in the year of our Lord 1883, the said cause came on to be heard before the said Supreme Court on the transcript of record and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that the said complainant, The County of Franklin, in the State of Illinois, recover against the said The German Savings Bank of Davenport twenty dollars

for its costs herein expended, and have execution therefor, December 10, 1888.

176 You, therefore, are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States out to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 3rd day of August, in the year of our Lord 1889.

Costs of complainant:

Clerk	Paid.
Printing record	Paid.
Attorney	$20 00
	$20 00

JAMES H. McKENNEY,
Clerk of the Supreme Court of U. S.

(Upon which is endorsed:) Supreme Court of the United States. No. 46. October term, 1888. German Savings Bank of Davenport, Iowa, *vs.* County of Franklin, Illinois.

Mandate. Filed August 6th, 1889. *J. T. Jones, Clerk.*

Plaintiff then offered in evidence bonds and coupons; to which defendants objected. Objection overruled by the court, and defendants excepted.

Bonds of Franklin County, defendant, of one thousand dollars, $1,000, each, respectively numbered 11, 12, 14, 30, 33, 34, 35, 39, 47, 56, 57, 58, 59, 60, 62, 65, 66, and 77, the execution whereof was admitted by defendant, all of like tenor and effect, except the numbers, as the following:

177 UNITED STATES OF AMERICA, STATE OF ILLINOIS, *Franklin County:*

No. —.

Eight per cent. Railroad Bond.

Know all men by these presents, that the county of Franklin in the State of Illinois, acknowledges itself to be indebted to the Belleville & Eldorado Railroad Company, or bearer in the sum of one thousand dollars which sum the said county for value received promises to pay said company or bearer in the city and State of New York, twenty years after date (payable at any time after five years, and before this bond becomes due at the option of the said county of Franklin), with interest thereon from and after the 15th day of November, 1877, at the rate of 8 % per annum, payable semi-annually on the first days of January and July of each year, on the presentation and surrender at the place in the said city of New York where the treasurer of the State of Illinois pays the interest

and debt of said State, of the coupons hereto attached as they severally became due.

This bond is one of a series of like tenor for the sum of one thousand dollars each, numbered from one to one hundred inclusive, issued under the provisions of an act of the General Assembly of the State of Illinois, entitled, "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, 1861, authorizing subscriptions to the capital stock of said railroad, and in accordance with the majority of votes cast at an election held in said county on the 11th day of September A. D. 1869, in conformity with the provisions of said act.

In testimony whereof the said county of Franklin has executed this bond by the chairman of the board of supervisors under the order of the board of supervisors of said county, signing his name hereto, and by the clerk of said board, under the order thereof attesting the same and affixing hereto the seal of said county.

This done, at the office of the clerk of said board, this 13th day of November, A. D. 1877.

178 JOHN J. ST. CLAIR,
Chairman of the Board of Supervisors of Franklin County, Illinois.

[SEAL.] EVANS FITZGERRELL,
Clerk of the Board of Supervisors of Franklin County, Illinois.

AUDITOR'S OFFICE, ILLINOIS, SPRINGFIELD, *Nov. 3rd*, 1879.

I, Thomas B. Needles, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," *en* force April 16th, 1869.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[L. S.] T. B. NEEDLES,
Auditor of Public Accounts.

(Indorsed :) Filed June 17th, A. D. 1882. J. A. Jones, clerk.

The plaintiff then offered in evidence, subject to objections, one hundred and twenty-six interest coupons cut from the aforesaid bonds, overdue at the time this suit was commenced, of forty dollars each. The execution was admitted by defendant-, all of like tenor except the numbers, and of which the following is a true copy :

STATE OF ILLINOIS.

The county of Franklin will pay to the bearer, at the place in the city of New York where the treasurer of the State of Illinois pays the interest on the State debt, the sum of forty dollars on the 1st day of January, A. D. 1887, being six months' interest on bond issued under act approved February 22nd, 1861.

(No. —.) EVANS FITZGERRELL,
Clerk of Board.

Also two coupons cut from bonds number eighty-three and eighty-five, said bonds being admitted to be of the same tenor as the bonds introduced in evidence, and the execution of which bonds and coupons admitted by defendant-, said coupons being overdue at the time of the commencement of this suit, and of the same tenor of the coupons copied herein.

179 *Defendant's Evidence.*

The defendant- then offered in evidence the deposition of Chas. A. Akin and Exhibit "A" thereto, being the records of The County Board of Franklin County, defendant; to which evidence the plaintiff objected that said evidence was immaterial and improper; which objection was overruled by the court, and the plaintiff excepted to said ruling. Evidence received as follows:

(*Deposition of Chas. A. Akin.*)

CHAS. A. AKIN, being first duly sworn according to law, testified as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Chas. A. Akin; age, 31; residence, Benton, Franklin county, State of Illinois; clerk of the county court of Franklin county and State of Illinois, and have been continously ever since December, 1877.

Int. 2. State if you have examined all the records of said county relating to the election and subscription of stock by said county to the capital stock of the Belleville & Eldorado Railroad Company.

Ans. I have examined all the records of the county clerk's office relating to said matter.

Int. 3. Have you made copies of all the records relating to the same?

Ans. I have made copies of all the said records.

Int. 4. Will you please attach the same hereto as Exhibit —?

(The defendants, represented by Samuel P. Wheeler and Cook & Dodge, object to all of the said record, excepting that part of said records relating to the proceedings of the board of supervisors about the dismissal of the bill in equity, because said portion of the record *are* immaterial and irrelevant as against the *bona fide* holders of the bonds in controversy.)

180 Ans. I herewith hand the copies of the record, duly certified, to the master, marked Exhibit "A," and there are no other orders or resolutions relating to said matter that I know anything about or can find in my office.

Cross-examination waived by the attorneys for the defendants.

CHAS. A. AKIN.

Subscribed and sworn to before me this 6th day of June, 1882.

JOHN MULKEY,
Master in Chancery.

EXHIBIT "A" TO DEPOSITION OF CHAS. A. AKIN.

At a special term of the county court began and held at the court house, in Benton, on Saturday, July 24th, A. D. 1869.

Present: Hon. William E. Smith, county judge; James M. Akin and Isham Harrison, associate justices; C. M. Clark, county clerk, and William B. Denning, sheriff.

Court opened by proclamation, when the following order was made, to wit:

Be it ordered by the court that, by authority of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville & Eldorado Railroad Company," approved February 22nd, A. D. 1861, and an act of the General Assembly, approved November 6th, A. D. 1849, authorizing counties to take stock in railroad companies, notice is hereby given that on Saturday, the eleventh day of September, A. D. 1869, in the various precincts in the county of Franklin and State of Illinois, at the usual voting places, an election will be held upon the question whether or not the county of Franklin shall subscribe the sum of two hundred thousand dollars ($200,000.00) to the capital stock of the Belleville & Eldorado Railroad Company, payable in county bonds at par, due in twenty years from date, with interest, payable semi-annually, at the rate of eight per cent. per annum, and to be of the denomination of not less than one thousand dollars each, said bonds to be issued upon the following conditions and not until they are complied with:

1st. That the said railroad shall be located through Franklin county, running from Duquoin, in Perry county, to the town
181 of Raleigh, in Saline county, within one-quarter of a mile of the court-house in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight house be erected within said quarter of a mile of the court-house.

2nd. That said railroad shall be commenced within the county of Franklin within nine months from the date of said election and completed through the county by the first day of June, 1872.

3rd. That one hundred thousand dollars of said bonds, payable on said stock, shall be delivered to said company when said railro-d is in running order to and a station located at Benton, and one hundred thousand dollars of said bonds to be so delivered when the said railroad is completed and in running order through said Franklin county.

4th. That there be not less than three stations located in the county—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Galatia.

5th. That said election shall be opened at 8 o'clock in the morning and continue open until 6 o'clock in the afternoon, and shall be conducted by the judges of election appointed for the November election in 1868 if present; if not, judges may be chosen as at other elections.

6th. That persons voting at such election for subscription shall have written or printed on their tickets, "For subscription." Those voting against subscription shall have written or printed on their tickets, "Against subscription."

7th. And provided, also, that said subscription shall receive a number of votes equal to a majority of all the votes cast in said county at the last general election for county officers.

SATURDAY, *November 6th, A. D.* 1869.

County court met pursuant to adjournment.

Among other proceedings, the following were had, to wit:

Whereas in the various precincts of the county of Franklin
182 and State of Illinois, at the usual voting places therein, on Saturday, September eleventh, A. D. 1869, an election was held, in pursuance of an order made at a special term of the Franklin county court began and held at the court-house, in Benton, on Saturday, the 24th day of July, A. D. 1869, upon the question whether or not the county of Franklin should subscribe the sum of two hundred thousand dollars to the capital stock of the Belleville & Eldorado Railroad Company, payable in county bonds at par, due twenty years from date, with interest, payable semi-annually, at the rate of 8 % per annum, and to be of the denomination of not less than one thousand dollars each; and whereas at such election the qualified voters of said county did, by a majority of their votes (taking as a standard the number of votes cast for county officers at the last general election previous to the vote had upon the question of subscription as aforesaid), authorize the county court of said Franklin county to subscribe the sum of two hundred thousand dollars to the capital stock of said Belleville & Eldorado Railroad Company: Therefore, at an adjourned term of the Franklin county court began and held at the court-house, in Benton, Friday, November the fifth, A. D. 1869—present, Hon. W. E. Smith, county judge; J. M. Akin and Isham Harrison, associates; C. M. Clark, county clerk, and William B. Denning, sheriff—the following order was entered—that is to say:

It is considered and ordered by the court that by authority of the vote at the election aforesaid, held in the county of Franklin on the 11th day of September, A. D. 1869, and by authority of an act of the General Assembly of the State of Illinois entitled An act to incorporate the Belleville & Eldorado Railroad Company, approved February 22nd, 1861, and an act of the General Assembly, approved November 6th, 1849, authorizing counties to take stock in railroad companies, that the county of Franklin, in the State of Illinois, does hereby subscribe to the capital stock of the
183 Belleville & Eldorado Railroad Company the sum of one hundred thousand dollars by virtue of the said act of the General Assembly of the State of Illinois entitled 2 An act to incorporate the Belleville and Eldorado Railroad Company, apprpved Feb. 22, A. D. 1861, and the further sum of one hundred thousand dollars by virtue of an act of the said General Assembly, approved Nov. 6th, A. D. 1849, authorizing counties to take stock in rail-

road companies, making a total two hundred thousand dollars hereby subscribed to the capital stock of the said Belleville and Eldorado company; that said capital stock so subscribed as aforesaid be payable in the bonds of the county of Franklin, at par, said bonds to be due in twenty years from the date thereof and to draw interest, payable semi-annually, at the rate of 8 % per annum; said bonds to be of the denomination of not less than one thousand dollars each. It is further ordered and considered by the court that said bonds are to be issued upon the following conditions, and never until they are complied with—that is to say:

1st. That said railroad shall be located through Franklin county, running from Duquoin, in Perry county, to the town of Raleigh, in Saline county, within quarter of a mile from the court-house in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight house erected within said quarter of a mile of the said court-house.

2d. That said railroad shall be commenced in the county of Franklin within nine months from the date of said election, and completed through the county by the 1st day of June, A. D. 1872.

3rd. That one hundred thousand dollars of said bonds, payable on said stock, shall be delivered to said company when said railroad is in running order and the necessary cars running thereon from Duquoin or Eldorado to Benton and a station located at Benton, and one hundred thousand dollars of said bonds to be so delivered when the said railroad is completed and in running order
184 and the necessary rolling stock thereon through said Franklin county.

4th. That there be not less than three stations located in the said county of Franklin—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Galatia.

5th. That at *that* the time said bonds are issued and stock received said railroad, its fixtures and rolling stock are not to be mortgaged for more than the actual cash value of the same, and that there be no mortgage or lien upon the same under which said railroad fixtures or rolling stock can be or may be exposed for sale within a shorter time than twenty-five years from the date of such mortgage or lien.

MONDAY, *February 6th, A. D.* 1871.

At a special term of the county court began and held at the court-house, in Benton, on Monday, February 6th, 1871.

Present: Hon. D. M. Browning, county judge; J. M. Akin and Gilbert D. Sweetin, associate justices; C. M. Clark, Co. cl'k; Carroll Moore, sheriff.

Court opened by proclamation.

Whereas, by an order of this court made the 6th day of November, A. D. 1869, a subscription of two hundred thousand dollars was ordered to be made to the Belleville & Eldorado Railroad Company; and whereas said subscription required that the said railroad should be commenced in the county of Franklin within nine months from the date of the election authorizing said subscription to be made, to

wit, on the 11th day of June, A. D. 1870, and completed through said county by the 1st day of June, A. D. 1872; and whereas the time for commencing building of the said railroad has expired, it is therefore ordered that the time for commencing and completing the said railroad be extended and that the said subscription be made on the stock books of the Belleville & Eldorado Railroad Company upon the following terms and conditions and not until they are fully complied with, to wit, that said two hundred thousand dollars
subscribed to said capital stock as aforesaid be payable
185 in the bonds of the county of Franklin at par, said bonds to be due in twenty years from the date thereof and to draw interest, payable semi-annually, at the rate of 8% per annum, said bonds to be of the denomination of not less than one thousand dollars each; that said railroad shall be located through Franklin county, running from Duquoin, in Perry county, to the town of Raleigh, in Saline county, within one-quarter of a mile of the court-house in the town of Benton, in the said Franklin county, and that a station be there located and a passenger and freight house be erected within said quarter of a mile of said court-house; that said railroad shall be commenced in the county of Franklin on or before the 1st day of January, A. D. 1872, and completed through the county by the 1st day of January, A. D. 1874; that one hundred thousand dollars of said bonds payable on said stock shall be delivered to said company when said railroad is in running order and the necessary cars propelled by steam running thereon from Duquoin or Eldorado to Benton as aforesaid and a station located at Benton, and one hundred thousand dollars of said bonds to be delivered when the said railroad is completed and in running order and the necessary rolling stock thereon through said Franklin county; that there be not less than three stations located in the said Franklin county—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and Galatia.

Ordered that court be now adjourned until court in course.

D. M. BROWNING, *Judge,*
JAMES M. AKIN, *Associate, and*
GILBERT G. SWEETIN, *Associate.*

THURSDAY, *March 9th*, 1871.

Court met pursuant to adjournment.

Present: Same as yesterday.

Whereas, at an election held in Franklin county, in the State of Illinois, in strict accordance with law, on the 11th day of September, A. D. 1869, upon a proposition for Franklin county to subscribe two
hundred thousand dollars to the capital stock of the Belleville
186 and Eldorado Railroad Company, a majority of the legal voters of the county voted for the said subscription: Now, therefore, the county of Franklin of the State of Illinois, by the county judge and the associate judges of the Franklin county court, and attested by the official seal of said Franklin county, doth hereby subscribe the sum of two hundred thousand dollars for two thousand shares of the capital stock of the Belleville & Eldorado Railroad

Company, said shares to be of the amount of $100 each. Said stock is subscribed and the bonds to be issued upon the following conditions, and not until they are fully complied with, to wit: Said stock to be paid in Franklin county bonds at par, the bonds to be payable in twenty years after date, with interest at 8% per annum, payable semi-annually in New York, the bonds to be of the denomination of $1,000 each, with coupons for the interest attached thereto, the said county bonds to be delivered to said company as follows: One hundred thousand dollars of said bonds to be delivered when the section of said railroad extending from the eastern boundary of Franklin county to Benton is complete in running order, and a train of cars propelled by steam shall have run over the same, and one hundred thousand dollars of said bonds to be delivered when the section of said railroad extending from Benton to the other boundary of Franklin county is completed and a train of cars propelled by steam shall have run over the same, it being left optional with the company which section of the railroad it will build first, and the bonds of the county due on either section of the road shall be delivered to said company when that section is completed and the cars shall have run over it to Benton as aforesaid, and said county bonds shall be valid and binding on the county from and after the delivery thereof to said company, and the faith of Franklin county is hereby pledged for the payment of the bonds issued to said Belleville & Eldorado Railroad Company; the said
187 railroad to be commenced within the county in one year, and completed through the county within three years from the date of this subscription.

It is further provided that said railroad company shall erect a passenger and freight depot on said railroad at Benton, within one-quarter of a mile of the present court-house, and at least one other freight and passenger depot between Benton and each of the county lines in said Franklin county through which the road shall run.

It is further provided that this subscription and those previously made shall not be construed as intending to subscribe more than two hundred thousand dollars to said Belleville & Eldorado Railroad Company or companies that may build railroads within said county.

Witness the signatures of the judges of the county court of Franklin county, Illinois, and the seal of said court this 9th day of March, A. D. 1871.

DANIEL M. BROWING,
County Judge.
JAMES M. AKIN,
Associate Judge.
GILBERT G. SWEETIN,
Associate Judge.

Form of Bond to be Issued.

No. —. STATE OF ILLINOIS.

Franklin county bond, interest 8%, payable semi-annually.

Know all men by these presents, that the county of Franklin in the State of Illinois acknowledged itself indebted and firmly bound to the Belleville & Eldorado Railroad Company, or bearer, in the sum of one thousand dollars; which sum the said county for value received promises to pay the said company, or bearer, in the city and State of New York, twenty years after date, with*in* interest thereon from the date —— 187– at the rate of 8% per annum, payable semi-annually on the 1st days of January and July in each year, on presentation and surrender at the place, in the city of New York, where the treasurer of the State of Illinois pays interest and debt of State, of the coupons hereto attached as they severally become due.

188 This bond is one of two hundred of like tenor and amount of same issue and it is issued pursuant to an order of the county court of said county authorized by a majority of the votes cast at an election held in said county pursuant to law on the 11th day of September A. D. 1869, in testimony whereof the said county of Franklin has executed this bond by the county judge of said county under the order of the county court of said county, signing his name hereto and by the clerk of said court under the order thereof attesting the same and affixing hereto the seal of said court. Done at the office of the clerk of said court this — day of —— A. D. 1872.

[SEAL.]

—— ——,
County Judge of Franklin County.
—— ——, *Clerk.*

Forty (40) coupons.

BENTON, FRANKLIN COUNTY, ILLINOIS, 187–.

The county court of Franklin promises to pay the sum of $40.00 on the 1st day of ——, 187–, being six months' interest on bond No. 1, for $1,000. This coupon is payable in the city of New York, at the place where the treasurer of the State of Illinois — interest on the State debt.

—— ——,
Clerk of County Court.

Proceedings of the Board of Supervisors, 3rd Day, June Term, 1872.

JUNE 5TH, 1872.

On motion of Mr. Fitts, the following resolution was adopted, to wit:

STATE OF ILLINOIS, } ss:
Franklin County, }

JUNE 5TH, 1872.

Resolved by the board of supervisors of said county, That we are opposed to issuing bonds to aid in the construction of the Belleville & Eldorado Railroad Company, to be placed in the hands of
189 a trustee, as asked for by President J. J. Castles in his contract read before this board on yesterday, and that we will not issue said bonds to be applied on said contract under any condition, unless compelled to do so by law, either before or after the completion of said railroad.

M. FITTS.

Proceedings of the Board of Supervisors, 3rd Day, June Term, 1872.

WEDNESDAY, *June the 5th,* 1872.

On motion of Jessie G. Mitchell, the following resolution was offered, to wit:

STATE OF ILLINOIS, } ss:
Franklin County, }

JUNE 5TH, 1872.

Whereas, on the 24th day of July, 1869, the court of the aforesaid county passed an order, in conformity with law, authorizing the voters of said county to vote for or against subscribing two hundred thousand dollars to the capital stock of the Eldorado R. R. Co.; and whereas, on the 11th day of September, 1869, the legal voters did by required majority vote in favor of subscribing said $200,000 stock; and whereas, on the 15th day of November, 1869, the aforesaid county court, in conformity with the expressed will of a majority of the legal voters of the aforesaid county, did subscribe $200,000 to the capital stock of said Belleville & Eldorado R. R. Co.; and whereas, on the 9th day of March, 1871, the county court of the aforesaid county did resubscribe the said $200,000 stock and extend the time for the completion of a railroad through said county to three years from that date: Therefore resolved, That we, the board of supervisors of the aforesaid county, have no disposition to trammel or repudiate any of the acts of the aforesaid county court to carry into effect the expressed will of the voters of the aforesaid county; but when said Belleville & Eldorado Railroad Company shall, under a *bona fide* contract, have in course of construction a railroad through the aforesaid county, in conformity with the expressed will of the legal voters of the aforesaid county mov-
190 ing in sympathy and union with the people, we stand ready, without compulsion, to aid said railroad company by all legal and prudential means in the completion of said railroad.

J. G. MITCHELL, *Mover.*

The vote stood:
For the resolution, J. G. Mitchell, Isaac Ward.
Again-t the resolution, M. Fitts, William J. Murphy, David Mar-

tin, Samuel McClelland, Peter Phillips, F. L. Rea, C. F. Mulkey, John H. Hogan, John A. Walker.

On motion, the following resolution was received and adopted:

Whereas there has been a proposition submitted to the board for them to renew the county subscription to the capital stock of the Belleville & Eldorado R. R. Co.; and whereas there has been no action taken by the board in relation thereto:

It is resolved, That when the present session of the board adjourn it be to meet again in an adjourned session on Wednesday, 13th inst., for consideration and final action upon the subject of the railroad subscription.

C. MOORE.

On motion, the report of the committee appointed to confer with the railroad men be received and adopted, to wit:

STATE OF ILLINOIS, } ss:
Franklin County, }

Supervisors' Court, Special December Term, '76.

We, the undersigned committee, appointed to confer with Hill and Nye, contractors of Belleville & Eldorado R. R. Co., would report that we have conferred with the contractors of said road, and that they will not agree to build the road through Franklin county for less than $150,000; all of which is respectfully submitted.

WILLIAM FLATT.
M. C. INGRAM.
C. MOORE.

191 *Supervisors' Meeting.*

December Term.

DECEMBER 13TH, 1876.

Court met pursuant to adjournment.

Among other proceedings the following were had, to wit:

On motion, the following order was adopted, to wit:

Whereas, in the various precincts of the county of Franklin and State of Illinois, at the usual voting places therein, on Saturday, September 11th, 1869, an election was held in pursuance of an order made at a special term of the county court of Franklin county, began and held at the court-house, in Benton, on Saturday, the 24th day of July, 1869, upon the question whether or not the county of Franklin should subscribe the sum of two hundred thousand dollars to the capital stock of the Belleville & Eldorado Railroad Company, payable in county bonds at par, due twenty years from date, with the privilege of paying after five years from date, with interest, payable semi-annually, at the rate of 8 % per annum, and to be of the denomination of not less than $1,000; and whereas at such election the qualified voters of said county did, by a majority of the votes (taken as a standard the number of votes cast for county officers at

the last general election previous to the vote had upon the question of subscription as aforesaid), authorized the county court of said Franklin county to subscribe the sum of $200,000 to the capital stock of said Belleville & Eldorado Railroad Company:

Therefore at a regular meeting of the board of supervisors of Franklin county began and held at the court-house, in the town of Benton, county of Franklin and State of Illinois, on Wednesday, the 13th day of December, A. D. 1876—present, James M. Brayfield, chairman; William Flatt, S. P. Kirkpatrick, L. Day, C. Moore, M. C. Ingram, M. D. Tyrrell, J. M. Weir, and J. N. Williams, members of the board of supervisors, with Evans Fitzgerrell, county clerk, and James M. Akin, sheriff—the following order was entered—that is to say:

192 It is considered and ordered by the board of supervisors of said county, by the authority of the vote heretofore mentioned and by the authority of an act of the General Assembly of the State of Illinois entitled An act to incorporate the Belleville & Eldorado Railroad Company, approved Feb. 22nd, 1861, and an act of the General Assembly approved November the 6th, A. D. 1849, authorizing counties to take stock in railroad companies—

That the county of Franklin, in the State of Illinois, doth hereby subscribe to the capital stock of the Belleville & Eldorado Railroad Company the sum of one hundred and fifty thousand dollars, being seventy-five thousand dollars by virtue of each of the acts of the General Assembly herein mentioned; that said capital stock so subscribed as aforesaid be payable in the bonds of Franklin county aforesaid at par; said bonds to be due in twenty years and may be paid at the expiration of five years from their date, at the option of the county; said bonds as aforesaid to draw interest at the rate of 8 % per annum, interest payable semi-annually, and to be of the denomination of not less than one thousand dollars each. It is further ordered by the board of supervisors that the said bonds be issued and placed in the hands of a trustee to be paid out upon the following conditions:

1st. That said railroad shall be located through Franklin county, running from the junction of said road near the west line of Saline county, Illinois, to Duquoin, Perry county, Illinois, and within one-fourth of a mile of the court-house in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight depot be there erected within said one-fourth of a mile of said court-house.

2nd. That said railroad shall be commenced within thirty days of the date of this order and completed by the 15th day of October, A. D. 1877.

193 3rd. That seventy-five thousand dollars of said bonds be applied to the building of the road from said junction in Saline county to Benton, in Franklin county, and that seventy-five thousand dollars be applied to the building of the road from Benton to Duquoin, to be delivered and paid to the contractors as each mile of the road is completed under the contract in proportion to the whole number of miles in each division built, and provided that

the contract of building is to include the building of the whole road from Saline county to Duquoin.

4th. That there be not less than three stations located in said county of Franklin, one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and the Saline county line.

Upon motion, the following resolution was adopted, to wit:

Resolved by the board, That R. Richeson be, and is hereby, appointed a commissioner on the part of the county to attend to getting the records made to conform to the requirements of the law and the form of the bond prepared to agree therewith, and to set forth the necessary facts on their face, and to get the bonds lithographed and return them here by the 23rd of this month; that the president of the board shall meet him at the county clerk's office in the court-house when notified by commissioner that the bonds are ready, and then and there the president of the board of supervisors and the county clerk shall sign and fill out said bonds and register them in accordance with the provisions of law, when they shall be delivered to said R. Richeson, commissioner, who shall take them to Evansville, Indiana, and place them in the hands of either the national banks of Evansville or the First National Bank of Evansville, as trustee, to pay the amount to the building contractors of the Belleville and Eldorado Railroad Company by order of the Belleville & Eldorado Railroad Company when the road is received by the said railroad company and county judge, and report to this board at next regular or special term.

C. MOORE.

194 DECEMBER 13TH, 1876.

On motion, the following resolution or order was adopted, to wit:

Ordered by the board of supervisors of Franklin county, Illinois, that R. Richeson, commissioner appointed to deliver bonds issued to the Belleville & Eldorado Railroad Company to trustee, be instructed to see that certificate- of stock to the amount of one hundred and fifty thousand dollars be issued by the officers of the Belleville & Eldorado Railroad Company to the county of Franklin, in the State of Illinois, and placed in the hands of the trustee holding the bonds to be delivered to the proper officer of Franklin county, Illinois, as the bonds are delivered to the railroad company. It is further ordered by the board of supervisors that the bonds issued to said railroad company and placed in the hands of the trustee shall be delivered to the contractors as specified in previous order as the building of the road progresses, but that they shall not be delivered until such section or mile of the road is received by the railroad company under the contract approved by the county judge of Franklin county, Illinois.

It is further ordered by the board of supervisors that the coupons on bonds be due and payable on the 1st days of January and July of each year at the place in the city of New York where the treasurer of Illinois pays the interest on the State debt, and that before the trustee delivers any portion of the bonds herein mentioned to

the railroad company said trustee shall remove from said bond or bonds and mark as cancelled any coupon or coupons due at the time the company and county judge report, as heretofore provided, the completion of any portion of said road; that in case a portion of the coupon is due only that a memorandum thereon be made by the trustee showing what amount is so due, and that the trustee report his action from time to time to this board, returning all cancelled coupons.

C. MOORE, *Mover.*

195 MARCH 6TH, 1877.

On motion, the following resolution was adopted, to wit:

Resolved, That W. H. Williams or William R. Ward, of Benton, Illinois, and either of them, are hereby empowered and authorized to represent the stock of Franklin county, Illinois, now subscribed to the Belleville & Eldorado Railroad Company, and vote such stock at the annual election for directors for said railroad company at the annual election to be held at Galatia, Saline county, Illinois, on the 7th day of March, A. D. 1877, said stock amounting to the sum of one hundred and fifty thousand dollars.

WILLIAM FLATT, *Mover.*

JUNE 20TH, 1877.

Whereas certain rumors are afloat in this county of a character calculated to injure the credit of the county bonds issued in favor of the Belleville & Eldorado railroad, and consequently damage the enterprise and retard the work now in progress:

Therefore resolved, That we regard with disapproval any such rumors or any action of any person or persons who seek in any way to lessen the value of the Franklin county subscription to said R. R. as being opposed to the true interest of the county, and we hereby declare our intention to use all proper and rightful means to carry out the purpose of this board expressed in a former order for the subscribing of the stock and the issuing of the county bonds to pay for same.

On motion, the above resolution was passed by the following vote:

Yeas—William Flatt, J. M. Weir, J. K. Manion, L. Day, and J. J. St. Clair.

Noes—J. M. Brayfield, John W. Williams, S. P. Kirkpatrick, Jessie Taylor.

SEPTEMBER 13TH, 1877.

On motion, the following resolution was adopted, to wit:

Resolved by the board of supervisors of Franklin county, That we hereby extend to the directors of the Belleville & Eldorado
196 Railroad Company further time for the building of said Belleville & Eldorado railroad until the 15th day of March, A. D. 1878.

J. WEIR, *Mover.*

The yeas and nays, being called for, resulted as follows:

Yeas—James K. Manion, L. Day, William Flatt, J. M. Weir.

The nays—S. P. Kirkpatrick, John W. Williams, Jesse Taylor, James M. Brayfield.

It being a tie vote, the chairman voted in the affirmative.

DECEMBER 13TH, 1876.

And now J. M. Weir, of Cave township, offered the following preamble and resolution, which was read, to wit:

Whereas at an adjourned meeting of the board of supervisors of Franklin county, Illinois, held at the court-house in Benton, in said county, on Wednesday, the 13th day of December, A. D. 1876, the following was among the proceedings of said board—that is to say:

DECEMBER 13TH, 1876.

Court met pursuant to adjournment.

On motion, the report of the committee appointed to confer with the railroad men be received and adopted, to wit:

STATE OF ILLINOIS, } ss:
Franklin County, }

Supervisors' Court, Special December Term, '76.

We, the undersigned committee appointed to confer with Hill and Nye, contractors of the Belleville & Eldorado Railroad Company, would report that we have conferred with the contractors of said road and that they will not agree to build the road through Franklin county for less than one hundred and fifty thousand dollars; all of which is respectfully submitted.

WILLIAM FLATT,
M. C. INGRAM, AND
C. MOORE.

On motion, the following order was adopted, to wit:

Whereas in the various precincts of the county of Franklin and State of Illinois, at the usual voting places therein, on Saturday, September 11th, A. D. 1869, an election was held in pursuance of an order made at a special term of the county court of Franklin county began and held at the court-house in Benton on Saturday, the 24th day of July, A. D. 1869, upon the question whether or not the county of Franklin should subscribe the sum of two hundred thousand dollars to the capital stock of the Belleville & Eldorado Railroad Company, payable in county bonds, at par, due in twenty years from date, with the privilege of paying after five years from date, with interest, payable semi-annually, at the rate of 8% per annum, and to be of the denomination of not less than one thousand dollars each; and whereas at such election the qualified voters of said county did, by a majority of the votes (taken as a standard the number of votes cast for county officers at the last general election previous to the vote had upon the question of subscription as aforesaid), authorized the county court of said

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Franklin county to subscribe the sum of two hundred thousand dollars to the capital stock of the said Belleville & Eldorado Railroad Company: Therefore, at a regular meeting of the board of supervisors of Franklin county began and held at the court-house in the town of Benton, county of Franklin and State of Illinois, on Wednesday, the 13th day of December, A. D. 1876—present, James M. Brayfield, chairman; William Flatt, S. P. Kirkpatrick, L. Day, C. Moore, M. C. Ingram, M. B. Tyrrell, J. M. Weir, J. W. Williams, members of the board of supervisors, with Evans Fitzgerrell, county clerk, and James M. Akin, sheriff—the following order was entered—that is to say:

It is considered and ordered by the board of supervisors of said county, by the authority of the vote heretofore mentioned and by the authority of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Belleville & Eldorado railroad company," approved Feb. 22nd, A. D. 1861, and an act of the said General Assembly, approved November 6th, A. D.
198 1849, authorizing counties to take stock in railroad companies, that the county of Franklin, in the State of Illinois, does hereby subscribe to the capital stock of the Belleville & Eldorado Railroad Company the sum of one hundred and fifty thousand dollars, being seventy-five thousand dollars by virtue of each of the acts of the General Assembly mentioned.

That said capital stock so subscribed as aforesaid be payable in the bonds of Franklin county aforesaid at par; said bonds to be due in twenty years and may be paid after the expiration of five years from this date, at the option of the county; said bonds to draw interest at the rate of 8% per annum, interest payable semi-annually, and to be of the denomination of not less than one thousand dollars each.

It is further ordered by the board of supervisors that the said bonds be issued and placed in the hands of a trustee, to be paid out upon the following conditions:

1st. That said railroad shall be located through Franklin county, running from the junction of said road near the west line of Saline county, Illinois, to Duquoin, Perry county, Illinois, and in one-fourth of a mile of the court-house, in the town of Benton, in said Franklin county, and that a station be there located and a passenger and freight depot be there erected within said one-fourth of a mile of said court-house.

2nd. That said railroad shall be commenced within thirty days from the date of this order and completed by the 15th day of October, A. D. 1877.

3rd. That seventy-five thousand dollars of said bonds be applied to the building of said road from said junction in Saline county to Benton, in Franklin county, and that seventy-five thousand dollars be applied to the building of the road from Benton to Duquoin, to be delivered and paid to the contractors as each mile of
199 the road is completed under the contract in proportion to the whole number of miles in each division built, and provided

that the contract of building is to include the building of the whole road from Saline county to Duquoin.

4th. That there be not less than three stations located in said county of Franklin—one at Benton as aforesaid, one between Benton and Duquoin, and one between Benton and the Saline county line.

The yeas and nays being demanded on the adoption of the above order, the vote stood as follows:

Yeas—C. Moore, M. B. Tyrrell, J. M. Weir, William Flatt, and L. Day.

Nays—M. C. Ingram, J. W. Williams, S. P. Kirkpatrick.

The chairman of the board requested that the record show that he was opposed to the adoption of the above order.

It appearing that a majority of the members of the board voted in favor of adopting the above order, it was so declared.

Upon motion, the following resolution was adopted, to wit:

Resolved by the board, That R. Richeson be, and he is hereby, appointed a commissioner on the part of the county to attend to getting the records made to conform to the requirements of the law and the form of the bonds prepared to agree therewith, and to set forth the necessary facts on their face and get the bonds lithographed and return them here by the 23rd of this month; that the president of the board shall meet him at the county clerk's office in the court-house, when notified by commissioner that the bonds are ready, and then and there the president of the board of supervisors and the county clerk shall sign and fill out said bonds and register them in accordance with the provision of law, when they shall be delivered to said R. Richeson, commissioner, who shall take them to Evansville, Indiana, and place them in the hands of either the National Bank of Evansville or the First National Bank of Evansville, as trustee, to pay them out to the building contractors of the Belleville & Eldorado Railroad Company, by order of the Belleville & Eldorado Railroad Company, when the road is received by the railroad company and county judge, and report to this board at next regular meeting or special term.

C. MOORE.

Supervisor's record, page 367.

DECEMBER 13TH, 1876.

On motion, the following resolution or order was adopted, to wit:

Ordered by the board of supervisors of Franklin county, Illinois, that Richard Richeson, commissioner appointed to deliver bonds issued to the Belleville & Eldorado Railroad Company to trustee, be instructed to see that certificates of stock to the amount of one hundred and fifty thousand dollars be issued by the officers of the Belleville & Eldorado Railroad Company to the county of Franklin, in the State of Illinois, and placed in the hands of trustees holding the bonds to be delivered to the proper officer of Franklin county, Illinois, as the bonds are delivered to the railroad company. It is further ordered by the board of supervisors that the bonds issued to the said railroad company and placed in the hands

of the trustee shall be delivered to the contractors as specified in previous order as the building of the road progresses, but that they shall not be delivered until such section or mile of road is received by the railroad company under the contract approved by the county judge of Franklin county, Illinois. It is further ordered by the board of supervisors that the coupons on bonds be due and payable on the first days of January and July of each year, at the place in the city of New York where the treasurer of the State of Illinois pays the interest on the State debt; and before the trustee delivers any portion of the bonds herein mentioned to the railroad company the trustee shall remove said bond or bonds and mark as cancelled any coupon or coupons due at the time the company and county judge report as heretofore provided, the completion of any portion of said road.

201 That in case a portion of a coupon is due only, that a memorandum thereon be made to the trustee showing what amount is so due; and that the trustee report his action from time to time to this board, returning all cancelled coupons.

C. MOORE.

And whereas James M. Brayfield, as chairman of said board of supervisors, and Evans Fitzgerald, as clerk of said board, in pursuance of the order of said board of supervisors above recited, did, on the 22nd day of December, A. D. 1876, execute one hundred and fifty bonds of said Franklin county of the denomination of one thousand dollars each, payable to the Belleville & Eldorado Railroad Company twenty years after date, redeemable at the option of the county after five years, with interest from and afte- the first day of January, A. D. 1877, at the rate of 8 % per annum, payable semi-annually at the first days of January and July of each year; which said bonds had the following recitals, to wit: This bond is one of one hundred and fifty of like tenor and amount of the same issue, and it is issued pursuant to an order of the board of supervisors of said county, authorized by a majority of the legal votes cast at an election held in said county pursuant to law on the 11th day of September, A. D. 1869. This bond is also issued under the provisions of an act to incorporate the Belleville & Eldorado Railroad Company, approved February 22nd, 1861, and an act of the General Assembly of the State of Illinois, approved November 6th, A. D. 1849, authorizing counties to take stock in railroad companies;

And whereas, in pursuant of said order of said board of supervisors, Richard Richeson, who was appointed by said board as commissioner for that purpose, conveyed said bonds to Evansville, in the State of Indiana, and deposited the same with the Evansville national bank as trustee for said Franklin county and said railroad company; and whereas the said railroad company did, on its part, deposit with said trustee, to wit, the said Evansville

202 national —, certificate of stock in said railroad company, payable to said Franklin county, amounting in the aggregate to one hundred and fifty thousand dollars; and whereas the said board of supervisors of Franklin county, Illinois, at its September

term, A. D. 1877, extended to the directors of said railroad company the time in which said railroad was to be completed, extending said time until the 15th day of March, A. D. 1878; and whereas the said railroad company are progressing with the construction of said road in said Franklin county and have fully completed one mile of said railroad within the said county of Franklin and that cars propelled by steam are and have been run thereon; and whereas the directors of said railroad company have applied to the board of supervisors of said county to change the wording in the bonds executed as aforesaid:

It is therefore considered and ordered by the board of supervisors of Franklin county, in the State of Illinois, that the order of said board made on the 15th day of December, A. D. 1876, subscribing one hundred and fifty thousand dollars to the capital stock of the Belleville & Eldorado Railroad Company be, and the same is hereby, amended as follows, to wit:

That said order subscribing said stock read as follows, to wit: That the county of Franklin, in the State of Illinois, under the provisions of an act of the General Assemble of the State of Illinois entitled An act to incorporate the Belleville & Eldorado Railroad Company, approved February 22nd, A. D. 1861, authorizing subscription to the capital stock of said railroad, and in accordance with the majority of the votes cast at an election held in said Franklin county, in conformity with said act, on the 11th day of September, A. D. 1869, does hereby subscribe the sum of one hundred thousand dollars to the capital stock of said Belleville & Eldorado Railroad Company, payable in bonds of said Franklin county at par; said bonds to be due in twenty years after date thereof, and payable at the option of
203 said Franklin county after five years; said bonds to bear interest from date at the rate of 8% per annum, payable semi-annually; said bonds to be of the denomination of one thousand dollars each; and that the county of Franklin, in the State of Illinois, under the provisions of an act of the General Assembly of the State of Illinois entitled An act to authorize cities and counties to subscribe stock to the railroad, approved November 6th, A. D. 1849, and under authority as evidenced by a majority of the qualified voters of said Franklin county at an election held in said county, in conformity with the provisions of said act, on the 11th day of September, A. D. 1869, does hereby subscribe the sum of fifty thousand dollars to the capital stock of the Belleville & Eldorado Railroad Company, payable in bonds of the said Franklin county at par; said bonds to be due in twenty years after the date thereof, and payable at the option of said Franklin county after five years; said bonds to bear interest from date at the rate of 8% per annum, payable semi-annually; said bonds to be of the denomination of one thousand dollars each.

It is therefore considered and ordered by the board of supervisors of Franklin county, and State of Illinois, that the chairman of the board of supervisors of said Franklin county and the clerk thereof are hereby ordered and directed to execute bonds of said Franklin county in payment of said amended subscription to said capital

stock of the Belleville & Eldorado Railroad Company as follows, to wit: That said chairman and said clerk execute one hundred bonds of said Franklin county of the denomination of one thousand dollars each, payable to the Belleville & Eldorado Railroad Company or bearer twenty years after the date thereof, and payable at any time after five years and before said bonds become due, at the option of said Franklin county, with interest thereon from the date thereof at the rate of eight 8% annum, payable semi-annually on the 1st days of January and July of each year; said bonds and the
204 interest thereon to be made payable in the city and State of New York, at the place where the treasurer of the State of Illinois pays the interest and debt of said State; said bonds to be executed in conformity with and under the provisions of an act of the General Assembly of the State of Illinois entitled An act to incorporate the Belleville & Eldorado Railroad Company, approved Feb. 22nd, A. D. 1861, authorizing subscription to the capital stock of said railroad company, and in accordance with the majority of the votes cast at an election held in said county, in conformity with the provisions of said act, on the 11th day of September, A. D. 1869.

It is further ordered by said board of supervisors of said Franklin county that the chairman of said board of supervisors and the clerk thereof are hereby here ordered and directed to execute bonds of said Franklin county in payment of said amended subscription to the capital stock of the Belleville & Eldorado Railroad Company as follows, to wit: That said chairman and said clerk execute fifty bonds of said Franklin county of the denomination of one thousand dollars each, payable to the Belleville & Eldorado Railroad Company or bearer twenty years after the date thereof, and payable at any time after five years and before said bonds become due, at the option of the said Franklin county, with interest thereon from the date thereof at the rate of 8% per annum, payable semi-annually on the 1st days of January and July of each year; said bonds and the interest thereon to be made payable in the city and State of New York, at the place where the treasurer of the State of Illinois pays the interest and debt of said State.

Said bonds to be executed *and* in conformity with and under the provisions of an act of the General Assembly of the State of Illinois entitled An act to authorize cities and counties to subscribe stock to railroads, approved November 6th, A. D. 1849, and as
205 authorized by a majority of the qualified voters of said Franklin county at an election held in said county, in accordance with the provisions of said act, on the 11th day of September, A. D. 1869.

It is further ordered by the board of supervisors of said Franklin county that the clerk of said board make a record of said bonds and the coupons thereto attached as required by law. It is further considered and ordered by the board of supervisors that John J. St. Clair, chairman, and Joseph M. Weir, member of said board, are hereby appointed commissioners in behalf of said Franklin county, and said commissioners are hereby ordered and directed

to safely convey said bonds above describe- and executed to the city of Evansville and deposit the same with the Evansville National bank, trustee as aforesaid, and take receipt therefore; said commissioners are further ordered and directed to receive from said trustee, in exchange for said bonds so deposited by them, the above-mentioned one hundred and fifty (150) bonds of said Franklin county, executed as aforesaid, on the 22nd day of December, A. D. 1876, and that said commissioners are ordered to safely convey said bonds to the county of Franklin aforesaid, and deliver the same to the said board of supervisors or its committee appointed to cancel and destroy the same.

It is further ordered by the board of supervisors of said Franklin county that said Evansville national bank, trustee as aforesaid, received said bonds to be executed, pursuant to the order of said board of supervisors, at the special November —, A. D. 1877, and that said trustee hold said bonds and deliver the same to said railroad company only on the same conditions and under the same restrictions as specified in the order of said board of supervisors made, as aforesaid, on the 13th day of December, A. D. 1876.

J. M. WEIR.

On motion, the foregoing preamble and order was adopted
206 by the following votes:

Yeas—J. M. Weir, L. Day, J. K. Manion, L. D. Walker, and John J. St. Clair.

Nays—James M. Brayfield, S. P. Kirkpatrick, and Jessie Taylor.

DECEMBER 4TH, 1877.

To the honorable board of supervisors of Franklin county, Illinois, now in session—to the chairman and gentlemen of the board:

Your committee appointed to proceed to Evansville, Indiana, and exchange the bonds, amounting to one hundred and fifty thousand dollars, ask leave to make the following report, to wit:

We have been to Evansville, Indiana, and have made the exchange as directed by the board, and we submit with this report the receipt for new bonds and also the old bonds; and we, your committee, respectfully recommend that the following members be a committee to destroy said old bonds at this meeting: J. M. Brayfield, K. W. Williams, and S. P. Kirkpatrick.

All of which is respectfully submitted.

J. J. ST. CLAIR AND
J. M. WEIR.

On motion, the foregoing report was received and committee discharged.

Afterwards, to wit, on this day, J. J. St. Clair and Joseph M. Weir, commissioners as aforesaid, brought before the board of supervisors of Franklin county, Illinois, and delivered one hundred and fifty county bonds of the denomination of one thousand dollars each, with coupons attached, numbered from one to one hundred and

fifty, inclusive, issued to the Belleville & Eldorado Railroad Company, made the 4th day of December, 1876, to J. M. Brayfield, J. W. Williams, and S. P. Kirkpatrick, committee appointed to receive, destroy, and cancel of record the aforesaid bonds and coupons; also the said St. Clair and Weir, commissioners as aforesaid, presented to the board of supervisors the receipt of Henry Reiz, cashier of the Evansville national bank, for the one hundred and fifty bonds of one thousand dollars each deposited in lieu of old bonds,
207 as follows, to wit:

The bonds referred to in this report were this day, Nov. 14th, 1877, withdrawn by John J. St. Clair, president, and Joseph M. Weir, of the board of supervisors of Franklin county, Illinois, as per order of said board att-ched hereto, and new bonds, dated Nov. 13th, 1877, deposited in lieu thereof, and one hundred and fifty thousand dollars in amount, and held subject — the order of the borad of supervisors attached hereto—Exhibit "A."

HENRY REIZ, *Cashier.*

And afterwards, to wit, on this day, comes Brayfield, Williams, and Kirkpatrick, committee as aforesaid, and make their report that they have destroyed the one hundred and fifty bonds as aforesaid and cancelled the same, with coupons attached, of record, and ask to be discharged; and, on motion, report received and committee discharged.

MARCH 4TH, 1878.

On motion, resolved that the chair appoint a committee of three to examine all petitions in regard to extending time for building the Belleville & Eldorado Railroad Company and report by to-morrow, one o'clock p. m. Motion carried, and the chair appointed J. M. Brayfield and J. M. Weir and J. K. Manion as such committee.

MARCH 5TH, 1878.

STATE OF ILLINOIS, } *ss:*
Franklin County, }

Supervisors' Court, March Term. March 5th, A. D. 1878.

To the chairman and gentlemen of the board of supervisors:

Your committee to whom was referred the petitions requesting this board not to extend the time further than the 15th day of March, 1878, to the Belleville & Eldorado Railroad Company to build the Belleville & Eldorado railroad would represent that we have examined said petitions and find 1,334 names on said petition, but cannot vouch for the correctness of said petitioners, and would request said board to duly consider said petition.
208 All of which is respectfully submitted.

JAMES K. MANION.
J. M. WEIR.

On motion, report of committee received and committee discharged.

Resolved by the board of supervisors of Franklin county, That we hereby extend to the board of directors of the Belleville & Eldorado Railroad Company further time for the building of said railroad until the 15th day of September, 1878.

J. M. WEIR.

March the 5th, 1878.

Resolved by the board of supervisors of Franklin county, That we hereby extend to the board of directors of the Belleville & Eldorado Railroad Company further time for the building of said railroad until the 15th day of September, 1878.

J. M. WEIR.

March the 5th, 1878.

Motion and second- that the above resolution be amended so as to read 1st day of May instead of the 15th day of September, 1878.

Vote on the adoption of the amendment stood:

Yeas—Brayfield, Taylor, Williams, Kirkpatrick.

Nays—Weir, Walker, Day, Manion, St. Clair.

Vote on the adoption of the resolution extending the time to the board of directors for the construction of the Belleville & Eldorado railroad stood:

Yeas—Weir, Walker, Day, Manion, St. Clair.

Nays—Brayfield, Taylor, Williams, Kirkpatrick.

On motion of Isham Harrison, the following resolution was adopted:

Whereas one hundred and fifty of the railroad bonds of Franklin county, as bonds of this county which were designed to be paid upon certain conditions to the Belleville & Eldorado Railroad Company for stock, for the sum of one thousand dollars each, were deposited with the Evansville national bank, Evansville, Indiana, as trustee, by the supervisors of said county, under and by virtue of an order of said board of supervisors made at the November special meeting thereof, A. D. 1877; and whereas there is doubt of the legality of placing said bonds out of the immediate custody and possession of this board: Therefore it is ordered by the said board of supervisors of said county that Chas. A. Akin, county clerk, be, and he is hereby, appointed agent and commissioner for and on behalf of said
209 county to proceed to Evansville, Indiana, at once and for and on behalf of Franklin county demand and receive said bonds from said bank and receipt for the same, and pay said bank all reasonable charges for keeping said bonds, and that said Chas. A. Akin keep and retain possession of the said bonds for and on behalf of this board of supervisors until otherwise directed by this board or the successors thereof, and that said Chas. A. Akin re-

port to this board at its next meeting of his acts and doings under this order.

Dated this 22nd day of July, A. D. 1878.

ISHAM HARRISON, *Mover.*

On motion, the above order was adopted by the board.
(September 9th, 1878.)

And now comes Chas. A. Akin, commissioner of and on behalf of Franklin county, appointed by this board to proceed to Evansville, Indiana, and demand the removal of the Franklin county railroad bonds to Benton, and makes his report as follows, to wit:

STATE OF ILLINOIS, } ss:
Franklin County, }

To the honorable chairman and members of the board of supervisors:

The undersigned, who was appointed by this — an agent or commissioner in regard to the bonds subscribe- to the Belleville & Eldorado railroad on behalf of Franklin county, and who was ordered by this board to proceed to Evansville, Indiana, and demand of the trustee the said bonds, their surrender to him and their removal to Benton, Franklin county, Illinois, would beg leave to make the following report of his doings:

Immediately after the passage of said order by this board I proceeded to Evansville, Indiana, and demanded of the president of the Evansville National Bank of Evansville, Indiana, the delivery into my hands of the said bonds, and at the same time I presented a copy of the order of this court authorizing the same, and also a copy of his receipt showing that the bonds were deposited with him. I also tendered him my receipt for said bonds. Whereupon the said president of said bank, as such trustee, refused, upon the
210 order of this court, to deliver into my hands the said bonds; consequently I returned home without the said bonds; and I would further report that as such agent or commissioner I have never obtained the possession of said bonds or any part of them.

All of which is respectfully submitted.

CHAS. A. AKIN,
Commissioner on Behalf of Franklin County.

On motion, the above report was received and adopted by the board.

And now comes Isham Harrison and presents the following resolution, which was adopted by the board, as follows, to wit:

STATE OF ILLINOIS, } ss:
Franklin County, }

To the chairman and board of supervisors of Franklin county, Illinois:

Resolved, That we request Judge D. M. Browning to make a report to this court as to the amount of Franklin county bonds he

has signed as agent on behalf of Franklin county to the Belleville & Eldorado Railroad Company or the contractors of said road; said report to contain the number of the several bonds and under what act issued; also to show the amount of stock by certificates that has been given by said railroad company, and to make report to this board at one o'clock p. m. of this date.

Dated this September 16th, A. D. 1878.

On motion of James K. Manion, the chair appointed Isham Harrison a committee of one to inform D. M. Browning of the foregoing resolution.

And also, on motion of Isham Harrison, it is ordered by the board that the clerk furnish D. M. Browning with a copy of the above resolution.

Now comes D. M. Browning, county judge, and makes the following report, to wit:

STATE OF ILLINOIS, }
Franklin County. }

211 To the honorable board of supervisors of Franklin county, Illinois:

The undersigned, county judge of Franklin county, Illinois, would respectfully report, in accordance with your resolution of this day, that under the contract made by your board subscribing stock to the Belleville & Eldorado Railroad Company I have given orders to James Hill & Company for the Franklin county bonds as each mile of said railroad was built from Saline county, Illinois, to Benton, and under said orders James Hill & Co. have drawn from the Evansville national —, as trustee, seventy-five thousand dollars in Franklin county bonds, being bonds from number one to seventy-five, inclusive, issued under act of February 22nd, A. D. 1861, incorporating the Belleville and Eldorado Railroad Company. The Evansville national bank, as trustee, holds, subject to the order of the board of supervisors of this county, seventy-five thousand dollars in certificates of stock issued by said railroad company to Franklin county, Illinois. There has been one-half of the bonds delivered and one-half of the stock certificates deposited under the subscription made by your honorable body.

Respectfully submitted.

D. M. BROWNING.

September 16th, 1878.

And now comes James Hill & Co. and submit a proposition asking for an extension of the time for completing the Belleville & Eldorado railroad as follows, to wit:

STATE OF ILLINOIS, }
Franklin County. } *ss*:

To the honorable board of supervisors of Franklin county, Illinois:

The Belleville & Eldorado Railroad Company respectfully repre-

sent unto your honorable body that, in pursuance of the contract heretofore made with this honorable board, James Hill & Co., the contractors for the construction of said railroad from the east line of said county to Duquoin, in Perry county, Illinois, have
212 completed said railroad to the main street leading south from the court-house in Benton and within one-fourth of a mile of said court-house, and that trains of cars have been propelled over said road by steam; that the time allowed by the order of your honorable body for the completion of said railroad expired on the 15th inst.; that no further extension of said road can be made without the friendly co-operation of your honorable body in extending the time to said company and contractors for the completion of said road. Said company feel warranted that if a reasonable time be fixed upon by your honorable body that work will at once progress on said road; but owing to the fact that the winter season is rapidly approaching, in which the work may — necessa-ily delayed in consequence of unfavorable weather, the said company feel constrained to ask for an extension for one year from this date. If, however, your honorable body should feel disinclined to act in the premises at this time, so as to insure the success of the enterprise, your petitioners respectfully ask that you adjourn without action for such time as will enable each of your honorable body to consult his constituents on the subject for an extension of time.

F. M. YOUNGBLOOD,
Solicitor for the Belleville & Eldorado R. R.

The following resolution was presented by Isham Harrison and adopted by the board, to wit:

STATE OF ILLINOIS, }
Franklin County, } *ss:*

To the chairman and gentlemen of the board of supervisors of Franklin county, Illinois:

Whereas there are one hundred and fifty bonds, of the denomination of one thousand dollars each, issued in aid of the Belleville & Eldorado Railroad Company for the construction of a railroad through the county of Franklin and State of Illinois, at the special November term, A. D. 1876, with the express understanding that said road was to be completed through the said county to Du-
213 quoin, in Perry county, Illinois, by the 15th day of March, A. D. 1878; and whereas said railroad company failed upon their part to complete said railroad according to the contract above mentioned; and whereas the county board of said county did, at the March term, A. D. 1878, extend the time for the completion of said road to the said company until the 15th day of September, A. D. 1878; and whereas the said railroad company again failed to complete said road last above mentioned: Therefore be it resolved by the county board of said Franklin county, at a special meeting held for county business on the 16th day of September, A. D. 1878, that we do hereby declare the said contract at

an end, and that we do authorize and request the First National Bank of Evansville, Indiana, to transmit by express to Duquoin, Illinois, all the bonds and certificates of stock in said railroad that may be in possession of said bank to Chas. A. Akin, who is commissioner and agent on behalf of the people of said Franklin county; and the said Chas. A. Akin is hereby authorized to receipt for the same and pay all reasonable charges and safely keep said bonds for the further action of the said county board.

And now comes F. M. Youngblood, solicitor for James Hill & Co., contractors of and for the building of the Belleville & Eldorado railroad, and enters his protest against the action of the board of supervisors of Franklin county in withdrawing the bonds from the Evansville national bank and their removal to Benton, Illinois.

OCTOBER 21ST, 1878.

And now comes James K. Manion and offered the following resolution, which was adopted by the board, to wit:

At a meeting of the board of supervisors of Franklin county, Illinois, held in Benton on Monday, July 22nd, A. D. 1878, all the members present—J. M. Brayfield, chairman; Chas. A. Akin, clerk; James M. Akin, sheriff—among other proceedings the following were had:

On motion of Isham Harrison, the following resolution
214 was adopted by the board, to wit:

Whereas one hundred and fifty of the railroad bonds of Franklin county as bonds of this county which were designed to be paid upon certain conditions to the Belleville & Eldorado Railroad Company for stock, for the sum of one thousand dollars each, were deposited with the Evansville National Bank of Evansville, Indiana, as trustee, by the supervisors of said county, under and by virtue of an order of said board of supervisors made at the November term (special meeting) thereof, A. D. 1877; and whereas there is doubt of the legality of placing said bonds out of the immediate custody and possession of this board:

Therefore it is ordered by said board of supervisors of said county that Chas. A. Akin, county clerk of said county, be, and he is hereby, appointed agent and commissioner for and on behalf of said county to proceed to Evansville, Indiana, at once, and for and on behalf of Franklin county demand and receive said bonds and receipt for the same and pay said bank all reasonable charges for keeping said bonds, and that said Chas. A. Akin keep and retain the possession of said bonds for and on behalf of this board of supervisors thereof, and that said Chas. A. Akin report to this board at its next meeting of his acts and doings under this order.

Dated this 22nd day of July, A. D. 1878.

ISHAM HARRISON, *Mover.*

On motion, the above order was adoted by the board.

And afterwards, to wit, on the 16th day of September, A. D. 1878, all the members being present—J. M. Brayfield, chairman; Chas.

A. Akin, clerk; James M. Aiken, sheriff—among other proceedings before the board the following were had, to wit:

STATE OF ILLINOIS, } ss:
Franklin County, }

To the chairman and gentlemen of the board of supervisors of Franklin, county, Illinois:

215 Whereas there are one hundred and fifty bonds, of the denomination of one thousand dollars each, issued in aid of the Belleville & Eldorado Railroad Company for the construction of a railroad through the county of Franklin and State of Illinois, at the special November term, A. D. 1876, with the express understanding that said road was to be completed through the said county to Duquoin, in Perry county, Illinois, by the 15th day of March, A. D. 1878; and whereas said railroad company failed upon their part to complete said road according to the contract above mentioned; and whereas the county board of said county did, at the March term, A. D. 1878, extend the time for the completion of said road to the said company until the 15th day of September, A. D. 1878; and whereas the said railroad company again failed to complete said road according to the contract last above mentioned:

Now, therefore, be it resolved by the county board of said Franklin county, at a special meeting held for county business on the 16th day of September, A. D. 1878, that we do hereby declare the said contract at an end, and that we do authorize and request the First National Bank of Evansville, Indiana, to transmit by express to Duquoin, Illinois, all the bonds and certificates of said stock in said railroad that may be in the possession of said bank to Chas. A. Akin, who is commissioner and agent on behalf of the people of said Franklin county, and the said Chas. A. Akin is hereby authorized to receipt for the same and pay all reasonable charges and safely keep said bonds for the further action of the said county board. By action of the board the above resolution was adopted. Therefore be it resolved by this board that the above resolution be, and the same is hereby, re-cinded.

Dated this October 21st, 1878.

J. K. MANION, *Mover.*

On motion of John W. Williams, the yeas and nays were demanded on the adoption of the above resolution, which resulted as follows:

216 Yeas—John J. St. Clair, James K. Manion, C. C. Biggs, Isham Harrison, Silas P. Kirkpatrick.

Noes—Jessie Taylor, Thomas Neal, John Williams.

The chairman, James M. Brayfield, entered his protest against the adoption of the above resolution.

And now, on motion of John J. St. Clair, the following resolution was adopted by the board, to wit:

Whereas at a special meeting of the board of supervisors of Franklin county, held at the court-house in Benton, in said county,

on the 13th day of December, A. D. 1876, a contract was made between the said board of supervisors of said county and the Belleville & Eldorado Railroad Company and James Hill and William Nye, under the firm name of James Hill & Co., as contractors under said company, for the construction of said Belleville & Eldorado railroad from the east line of said Franklin county to Duquoin, in Perry county, in which contract the said board of supervisors agreed to deliver to said railroad company and said James Hill & Co. one hundred and fifty bonds of said Franklin county at the denomination of one thousand dollars each, and to receive for said bonds the capital stock of said railroad company to the amount of one hundred and fifty thousand dollars; and whereas, under said contract, said bonds and stock were issued and placed in the hands of the Evansville National Bank, of Evansville, Indiana, as trustee for the county of Franklin, the said railroad company, and the said James Hill & Co.; and whereas said bonds and stocks were issued and placed in the hands of said trustee; and whereas by said contract the said bonds of Franklin county were to be delivered to said railroad company *pro rata* for — mile of said railroad as each mile of said railroad should be completed under the contract, and when the county judge of Franklin county should certify to said trustee that said railroad had been completed as provided in said contract, *and* said stock to be delivered to said county by said trustee;

217 And whereas, under said contract, the said railroad company and James Hill & Co. have completed said road from the east line of said county to Benton, and cars have been propelled by steam thereon, and seventy-five of the said bonds of said county have been delivered to the company and James Hill & Co., and seventy-five thousand dollars' worth of the capital stock of said railroad company has been deposited with the said trustee for said Franklin county; and whereas the time for the completion of said railroad to Duquoin, under said contract, expired on the 15th day of September, A. D. 1878; and whereas we regard it as advantageous to the people of said county to have said railroad completed through to Duquoin, so as to give our shippers competition in railroad transportation; and whereas said railroad cannot be extended to Duquoin, in the judgment of the board, without the time be extended to said company and contractors, and said bonds be delivered to said company as provided in said contract:

Therefore be it resolved by the board of supervisors of Franklin county, Illinois, in special meeting assembled, that the time for the completion of the said Belleville & Eldorado railroad from Benton to Duquoin be extended to said company and contractors until the 1st day of November, A. D. 1879.

And be it further ordered by said board of supervisors, that said Evansville national bank, as trustee aforesaid, be, and is hereby, ordered to pay out to said railroad company the bonds of said county now in its hand- as soon as the railroad is completed to Duquoin as provided in said original contract.

JOHN J. ST. CLAIR, *Mover.*

On motion of John W. Williams the yeas and nays were demanded on the above rewolution, which resulted as follows:

Yeas—John J. St. Clair, James K. Manion, C. C. Biggs, Isham Harrison, Silas P. Kirkpatrick.

Noes—Jesse Taylor, Thomas Neal, John W. Williams.

218 The chairman, James M. Brayfield, entered his protest against the adoption of the above resolution.

Board met pursuant to adjournment at 9 o'clock a. m. Tuesday, April 22nd, 1879.

Roll-call: All the members present.

On motion of Washington Vaughn, Honorable F. M. Youngblood, attorney for the Belleville & Eldorado railroad, is requested to read the contract or agreement made and entered into between James Hill & Co., contractors of said railroad company, and W. Bayard Cutting, of New York. Contract read in the presence of the board.

And now comes James Martin, of Good township, and offers the following resolution, which is adopted by the board, to wit:

To the chairman and board of supervisors of Franklin county, Illinois:

Whereas a majority of this board have recently come into office and are not fully advised concerning the legal effect of the acts and proceedings of our predecessors in office relative to and concerning the Belleville & Eldorado Railroad Company and the bonds of this county known as our railroad bonds; and whereas we can see no advantage to be gained by the hasty and premature action on our parts in the premises, but desire to proceed deliberately and advisedly as the representatives of the tax-payers of Franklin county, Illinois:

Therefore resolved, that the president and cashier of the Evansville National Bank, of Evansville, Indiana, the present custodians of at least a portion of our said county railroad bonds, be, and they are hereby, instructed not to pay out or deliver over any of our said railroad bonds to the officers or representatives of said Belleville & Eldorado Railroad Company, or to any other person or persons whomsoever, until further instructed to do so by this board.

Resolved, that the said president and said cashier above named be, and they are hereby, requested to report immediately to the chairman of this board the numbers, amounts, and dates of all our

219 said railroad bonds now in their custody or possession, together with any other facts within their knowledge connected with said bonds deemed proper by them to report.

Resolved, that the clerk of this Franklin county, Illinois, be instructed to transmit without delay a certified copy of these resolution-, together with the action of this board concerning the same, to the said president and said cashier of said Evansville National Bank, of Evansville, Indiana.

JAMES MARTIN.

On motion of Samuel F. Buntin, the following resolution was read by the clerk of this board, to wit:

Resolved by the board of supervisors of Franklin county, Illinois, at the special term of said —, held at Benton April 21st & 22nd, 1879, that we do hereby endorse and sustain the action of the board of supervisors of our county in the year of 1878 in contracting for the construction of the B. & E. R. R. with James Hill & Co., and for the extension of the time granted to said company to complete their contract, and that we believe any action tending to vitiate said contract or impair the credit of the bonds issued under said contract should be discouraged by us until after the 1st of November, 1879.

S. F. BUNTIN.

The above resolution was rejected by the board.

APRIL 30TH, 1879.

On motion of John W. Williams, the following resolution was read and adopted by the board, to wit:

Resolved by the board of supervisors of Franklin county, Illinois, that the county of Franklin, State of Illinois, do employ Andrew D. Duff, of Carbondale, Illinois, attorney for said county, to bring suit in the name of said county to prevent the further delivery of any bonds of said county to the Belleville & Eldorado Railroad Company or to any person or persons for them, and to test the legality of said bonds in some court having jurisdiction of the same.

JOHN W. WILLIAMS, *Mover.*

220 At the request of John J. St. Clair, a member of the board, the yeas and nays were demanded upon the adoption of the above resolution, which resulted as follows, to wit:

Yeas—James Martin, Washington Vaughn, John M. Darr, Jessie Taylor, John W. Williams.

Nays—Joseph Hammons, John J. St. Clair, Samuel F. Buntin.

On motion of John W. Williams, the chair appointed John M. Darr, James Martin, and Jesse Taylor a committee of three to confer with Andrew D. Duff upon the subject of the suit at law with the Belleville & Eldorado Railroad Company.

And now comes the committee appointed to confer with A. D. Duff and makes the following report:

STATE OF ILLINOIS, }
Franklin County, } *ss:*

To the chairman and board of supervisors of Franklin county:

We, your committee appointed to confer with Andrew D. Duff in regard to bringing suit to test the legality of said Franklin county railroad bonds and to prevent the further delivery of the same, beg leave to report as follows, to wit:

We have conferred with said A. D. Duff and have agreed with

him, as per contract entered into between said Duff and a majority of the members of this board, as follows, to wit:

All of which is respectfully submitted.

JAMES M. DARR.
JESSE TAYLOR.
JAMES MARTIN.

Contract.

Contract between Andrew D. Duff, of the one part, and The County of Franklin, of the other part, as follows, viz:

Said Duff, as attorney for said county, agrees to commence and prosecute to as speedy a termination as the laws and the rules and practices of the court will permit the proper suit or proceedings to protect and secure said county against the issue and delivery of any more of the seventy-five thousand dollars of the bonds of the said county now in the possession of a certain bank in Evans-
221 ville, Indiana, as trustee to the Belleville & Eldorado Rail-road Company, purporting to be in payment of a supposed subscription of said county to the capital stock of said railroad company under a vote of the people of said county in 1869, said suit or proceedings to be commenced at once; and the said county agrees to pay a retainer of three hundred dollars when this contract is signed and filed for record, and when there shall be a final judgment or decree by the proper court that said bonds so in the hands of said bank as trustee be returned to the proper authority of said county or declared void, and that said county is not lawfully bo-nd and has no lawful power and authority to deliver said bonds to said railroad company or to issue and deliver any other bonds of said county to said railroad company instead of those now in the hands of said trustee, then said county agrees to pay said Duff one thousand and seven hundred dollars more for his said legal services. But if, upon a final hearing of said suit or proceedings, it shall be adjudged by the court that said county is and can be compelled to issue and deliver the said sum of seventy-five thousand dollars of bonds not yet delivered to said company, then and in that case said county is not to pay said Duff any other fee or sum than the said three hundred dollars retainer named at the time this contract is signed and filed for record.

It is also further agreed between said parties that said parties *is* not to withdraw, dismiss, or discontinue any suit or proceeding commenced by said Duff in its name for the above purposes without his consent; and if said county should do so, then the said sum of seventeen hundred dollars over and above said retainer shall at once become due and payable to said Duff by said county; and, lastly, this contract shall be signed by said Duff and then by the board of supervisors of said county or a majority of them and then spread upon the records of said board by the county clerk as the contract of the parties hereto upon the subject-matter herein
222 mentioned and set forth.

In witness whereof we have hereunto set our hands and seals this 30th day of April, A. D. 1879.

ANDREW D. DUFF, *Attorney.* [SEAL.]
JESSE TAYLOR, *Supervisor.* [SEAL.]
J. W. WILLIAMS, *Supervisor, F. C.* [SEAL.]
JAMES MARTIN, *Supervisor, F. C.* [SEAL.]
WASHINGTON VAUGN, *Sup't, F. C.* [SEAL.]
JOHN M. DARR, *Sup't, F. C.* [SEAL.]

And now comes John M. Darr, of Ewing township, and offers the following resolution, which was adopted by the board, to wit:

Resolved by the board, That the contract this day signed by Andrew D. Duff, for himself, and by a majority of this board, for and on behalf of Franklin county, in regard to certain bonds of said county about to be issued to the Belleville & Eldorado Railroad Company be, and the same is hereby, ratified by this board for and on behalf of said county as the contract thereof, and it is hereby ordered that said contract be filed of record by the clerk upon the proper records of this board, and that said —, as the attorney of said county, is hereby authorized and requested to proceed at once, by the institution of the proper suit or proceedings in the name of this county, to carry out his undertaking and agreement in said contract contained.

JOHN M. DARR, *Mover.*

By request — John J. St. Clair, a member of this board, the yeas and nays on the adoption of the above resolution *was* ordered, which showed the following vote:

Yeas—James Martin, Washington Vaughn, John M. Darr, John W. Williams, Jesse Taylor.

Nays—Joseph Hammons, John J. St. Clair, Samuel F. Buntin.

MAY 10TH, 1879.

And now comes John J. St. Clair, member of this board, and offers the following resolution, which was rejected by the board, to wit:

Special Term, Supervisors' Court, Franklin County, Illinois, May 10th, 1879.

Whereas there is a difference of opinion among the members of the board as to wishes of a majority of the voters of the county on the railroad question: Therefore—

223 Resolved, That petitions be circulated throughout the county to read as follows, to wit: We, the undersigned, legal voters of Franklin county and State of Illinois, hereby petition our board of supervisors to take such action as will cause the dismissal of the suit of our county by A. D. Duff as attorney against the Belleville & Eldorado railroad and Bank of Evansville, as trustee, and prevent our county from paying any further costs or attorney fees than those already paid in said cause, and such action as will carry out the contract of our county with the B. & E. R. R. in good faith and by

all honorable and legal means encourage the completion of said road at the earliest possible period of time.

Resolved, That the board meet again on May 19th, 1879, at ten o'clock a. m., and if at that time a majority of the legal voters of the county have signed the foregoing the board will take such action as to carry out the wishes of th- petitioner.

J. J. ST. CLAIR.

JUNE 4TH, 1879.

And now comes Samuel F. Buntin, a member of this board, who offers the following resolution, which is adopted and ordered of record, as follows:

Resolved by the board of supervisors of Franklin county, That the suit now pending in the circuit court of Franklin county in which The County of Franklin is complainant and The Belleville & Eldorado Railroad Company and others are defendants, it being a bill in chancery to enjoin the delivery of the bonds of said county now in the hands of the Evansville national bank, as trustee, to the Belleville & Eldorado Railroad Company under its contract with said county as said railroad shall be completed to Duquoin, be dismissed and discontinued, and that said bonds be delivered in strict compliance with the original contract made with the said county and the said railroad company and the contractors.

And be it further resolved by the board of supervisors, That John J. St. Clair hereafter, as said railroad progresses from Benton
224 to Duquoin, examine and receive said road under said contract, as therein provided for the county judge of said county to do, and to give orders to the said trustee, and that the trustee hereafter deliver said bonds on the order of the said John J. St. Clair showing that said railroad has been completed as provided in said contract.

And be it further resolved, That on the delivery of said bonds, or any part thereof, on the order of the said John J. St. Clair the chairman of this board is hereby directed to attach his certificate of registration to each of said bonds.

And be it further resolved, That all resolutions of this board heretofore passed on this subject inconsistent herewith be, and the same are hereby, repealed and revoked.

And it is further resolved, That F. M. Youngblood be, and he is hereby, authorized and empowered to take such legal steps as may be necessary to have said suit above mentioned dismissed and discontinued.

S. F. BUNTIN, *Mover.*

By request the yeas and nays are called for on the adoption of the above resolution, which showed the following votes: Yeas—John J. St. Clair, Joseph Hammons, S. F. Buntin, John G. Bowling. Noes—Jesse Taylor, J. W. Williams, J. M. Darr, and James Martin. There being a tie vote, the chairman voted in the affirmative.

Articles of agreement made and entered into between the county of Franklin, in the State of Illinois, party of the first part, and the

Belleville & Eldorado Company, party of the second part, and James Hill & Company, contractors for the construction of the Belleville & Eldorado railroad, party of the third part, witnesseth:

That whereas the said county of Franklin has heretofore issued and placed in the hands of the Evansville National Bank of Evansville, Indiana, as trustee, one hundred and fifty bonds of said county of the denomination of one thousand dollars each, which bonds were placed in the hands of said bank as trustee in pursu-
225 ance of a contract with said county of Franklin and said Belleville & Eldorado Railroad Company and the said James Hill & Co. for the construction and completion of the Belleville & Eldorado railroad from the east line of Franklin county to Duquoin, in Perry county, and under said contract the said trustee was directed to pay out said bonds to the said railroad company in *pro rata* installments as each mile of said road should be completed in pursuance of said contract from the said east line of said Franklin county westward to Duquoin; and

Whereas said railroad has been completed under said contract to a point two miles west of Benton, in said county, and eighty-three of said bonds have been delivered to said railroad company and said James Hill & Co. under said contract, leaving sixty-seven yet in the hands of said trustee; and

Whereas the county of Franklin, party of the first part, did, in the month of May last, retain Andrew D. Duff, counselor-at-law, to institute suit in the Franklin circuit court to enjoin the delivery of said bonds then in the hands of the said trustee, and agree to pay said Duff a fee of two thousand dollars, and have paid to said Duff three hundred dollars on said fee; and

Whereas the said county of Franklin has by it- board of supervisors abandoned and discontinued said injunction suit whereby the fee of said Duff has become due and payable; and

Whereas the said Andrew has proposed in the spirit of compromise to *except* in full satisfaction of his fee in said suit one thousand dollars in addition to the three hundred dollars already paid him; and

Whereas the said Belleville & Eldorado Railroad Company, through its contractors, the said James Hill & Co., have made ample arrangements for the certain completion of said railroad through to Duquoin in strict compliance with the said contract aforesaid; and

Whereas all the materials necessary for the completion of
226 said railroad have been bought and paid for, and enough thereof is now on the line of said road to complete the same eight miles west from Benton and the remainder of said materials ready to be placed along the line of said road as fast as the work progresses so as to make room therefor; and

Whereas the said Belleville & Eldorado Company and James Hill & Company have pledged to secure the completion of said road to Duquoin four hundred and fifty-five thousand dollars par value of the first mortgaged bonds *on* said company, together with about seven thousand shares of the capital stock of said company, to W. Bayard Cutting, of the city of New York, who is furnishing the nec-

essary means, in addition to the proceeds of the Franklin county bonds, necessary for the construction of said railroad to Duquoin; and

Whereas grave questions as to the liability of the county of Franklin for damages to the said railroad company and the said James Hill & Co. have grown out of the action of said county with reference to the attempted litigation of said bonds and as to the individual liability of the members of the board of supervisors; and

Whereas it is desirable on the part of parties hereto to amicably adjust and settle all differences growing out of the action of said county relative to said bonds on terms of equity and justice to all parties concerned:

Therefore these presents witnesseth that, in consideration of the premises and mutual covenants, promises, agreements, and undertakings of the parties hereinafter set forth, the said parties hereto mutually covenant, promise, undertake, and agree to and with each other as follows, to wit:

That the Belleville & Eldorado Railroad Company and the said James Hill & Company hereby covenant, promise, undertake, and agree to and with the said county of Franklin that they will refund to said county the three hundred dollars paid to said Andrew
227 D. Duff as his fee as aforesaid, and that they will pay to said Duff the one thousand dollars agreed to be accepted by him in satisfaction of said fee in the following manner: That they will deliver to the clerk of this board for cancellation one of the bonds of said county, of the denomination of one thousand dollars, when the same shall be received by them under this contract, and that they will pay all the expenses of the said trustee growing out of the trust created by said original contract.

And they do further covenant and agree to and with the said county of Franklin and with each member of said board of supervisors that they will waive and hereby do waive and release all claims for damages which they claim to have against said county or against any of the members of said board of supervisors growing out of any action of said board relative to the delivery of said bonds, and hereby waive and release all right of action either against the said county or against the individual members of said board growing out of said matters.

And the county of Franklin hereby promises, covenants, undertakes, and agrees to and with the said Belleville & Eldorado Railroad Company and with the said James Hill & Co. that the said Evansville national bank, trustee as aforesaid, shall and said trustee — hereby directed to deliver to the said railroad company and the said James Hill & Company and John J. St. Clair, a member of the board of supervisors of said county, on the presentation of this contract, all of the bonds of said county remaining in the hands of said trustee under said original contract, taking their receipt for the same, and that said trustee on the delivery of said bonds under this contract shall be discharged from all responsibility as such trustee.

And the said Belleville & Eldorado Railroad Company and

James Hill & Company further covenant, promise, and agree to and with the said county of Franklin that when said bonds shall
228 be so received by said railroad company, the said James Hill & Company, and the said John J. St. Clair, said bonds shall remain in the hands of the said John J. St. Clair, and shall by him be paid to the said railroad and the said James Hill & Company *pro rata* per mile as each mile of said road shall be completed from Benton to Duquoin and received by the said John J. St. Clair, as heretofore provided for, by the said board of supervisors of said Franklin county.

In witness whereof the said county of Franklin has executed this contract by the chairman of the board of supervisors and the clerk of said board, under the seal of said board, and the said Belleville and Eldorado Railroad Company by its president and secretary, under the seal of said company, and the said James Hill & Company by their private signature and seal.

Dated this July 16th, A. D. 1879.

SAMUEL HAMILTON, [SEAL.]
Chairman of the Board of Supervisors of Franklin County, Illinois.
CHAS. A. AKIN, [SEAL.]
Clerk of said Board.
WILLIAM R. WARD, [SEAL.]
President Belleville & Eldorado Railroad Company.
G. B. HOBLIT, [SEAL.]
Secretary Belleville & Eldorado Railroad Company.
JAMES HILL & CO. [SEAL.]

And now comes Samuel F. Benton and offers the following resolution, which is adopted by the board and ordered of record, as follows:

Resolved by the board of supervisors of Franklin county, that the foregoing contract between the county of Franklin, the Belleville & Eldorado Railroad Company, and James Hill & Company be accepted on the part of said county, and that the chairman of the board and the clerk thereof sign the same on the part of said county under the seal thereof.

SAMUEL F. BUNTIN, *Mover.*

And now comes John J. St. Clair and offers the following resolution, which is adopted by the board and ordered of record, in the following words, to wit:

Resolved by the board of supervisors of Franklin county,
229 Illinois, that the proposition of Andrew D. Duff to accept one thousand dollars in settlement in full of his claim of one thousand and seven hundred dollars as attorney fee, which has become due by the terms of a contract heretofore made and entered into between the board of supervisors of said Franklin county, Illinois, be accepted, and that the county clerk of this — be, and he is

hereby, ordered to issue a county order for the sum of one thousand dollars, payable to said Andrew D. Duff.

J. J. ST. CLAIR, *Mover.*

On motion of Jesse Taylor the board adjourned, to meet on Monday, September the 8th, A. D. 1879, at the hour of ten o'clock a. m.

S. HAMILTON, *Chairman.*

Attest: CHAS. A. AKIN,
County Clerk.

SEPTEMBER 8TH, 1879.

The following resolution was introduced by John J. St. Clair, member of the board of supervisors from Benton township, and adopted by the board as follows, to wit:

Resolved by the board of supervisors of Franklin county, Illinois, that the clerk of this board be, and he is hereby, authorized to procure the stock-bond certificates of Franklin county, Illinois, to the amount of one hundred and fifty thousand dollars from the Evansville national bank and receipt for the same.

JOHN J. ST. CLAIR, *Mover.*

NOVEMBER 5TH, 1879.

On motion of John W. Williams, the board ordered John J. St. Clair to secure the payment by James Hill & Company (of) the sum of three hundred dollars to the treasurer of Franklin county, Illinois, in pursuance of a former order and contract on record.

On motion of John J. St. Clair, the board ordered the clerk of this board to deliver to the treasurer of Franklin county, Illinois, all the certificates of stock in the Belleville & Eldorado Railroad Company and take his receipt for them.

230 And now comes John J. St. Clair, who has been appointed by this board at a former term agent on the part of the county to receive and hold on deposit the residue of railroad bonds then in the possession of the Evansville National Bank of Evansville, Indiana, subject to the order of James Hill & Company, contractors for the construction of the Belleville & Eldorado railroad, to be paid out to them on the building of said road as per contract, and make oral report of his doings as such agent, and files receipts from said James Hill & Company for all the railroad bonds which came into the possession of him, the said John J. St. Clair, except bond number fifty (50) of the new series, which said bond is by the said St. Clair filed for cancellation, in pursuance of a former contract made and entered into by and between the board of supervisors of Franklin county, Illinois, and the said James Hill & Company.

Also the said John J. St. Clair presented to the board all the unearned coupons clipped from the bonds at the time they were delivered to the said James Hill & Company; and, on motion of John W. Williams, the board discharged the said John J. St. Clair from further duties as such agent.

STATE OF ILLINOIS, } ss:
Franklin County, }

I, Chas. A. Akin, clerk of the county court within and for the aforesaid county and State, do hereby certify that the above and foregoing is a true, correct, and complete copies of the records of the county court of said county as appears of record in said office.

In testimony whereof I have hereunto set my hand and affix the seal of said court this the 5th day of June, A. D. 1882.

CHAS. A. AKIN,
[L. S.] *County Clerk of Franklin County, Illinois.*

(Indorsed:) Filed June the 15th, 1882. J. A. Jones, clerk.

Opened at request of T. J. Layman, Esq., June 15th, '82.
J. A. JONES, *Clerk.*

231 Fees for taking depositions $5 00
Express charges 0 50

JOHN MULKEY,
Master in Chancery.

The defendant then offered in evidence deposition of W. R. Ward to prove the time of commencing and completing the railroad. The plaintiff did not object to the proof of the fact by the deposition, but objected to the evidence as being immaterial and improper evidence. Objection overruled by the court; to which ruling the plaintiff excepted.

Deposition received in evidence as follows:

Deposition of W. R. Ward.

W. R. WARD, being duly sworn according to law, upon his oath states as follows:

Int. 1st. Please state your name, age, residence, and occupation.

Ans. William R. Ward; age, 33; residence, Benton, Franklin county, State of Illinois; merchant and banker, and at present vice-president of the Belleville & Eldorado Railroad Company. I was made a director of said company in the spring of 1877. There was some grading done in the spring of the year of 1877 in this county. There was no work done in grading or track-laying on the Belleville & Eldorado railroad prior to January, 1877. If there was anything done in reference to constructing said railroad prior to said date it was surveying and obtaining the right of way within Franklin county. The first four miles of said railroad in the county was completed in the fall of 1877, from the east line of the county to Thompsonville, in Franklin county. The road was completed to Benton, ten miles west of Thompsonville, in the fall of 1878 (by the first day of September, 1878). Benton is the county-seat of Franklin county. The road was completed through the county about the

1st day of November, 1879. All the foregoing statements
232 are made from memory without any reference to any memorandas. There was no part of said railroad completed within Franklin county prior to January, 1877.

(The defendants, represented by Samuel P. Wheeler and Cook & Dodge, object — all the evidence in the foregoing deposition as to the time when said railroad was built or completed, because any evidence of that nature is immaterial and irrelevant as against the *bona fide* holders of the bonds in controversy.)

W. R. WARD.

Cross-examination waived.

Subscribed and sworn to before me this 6th day of June, A. D. 1882.

JOHN MULKEY,
Master in Chancery.

STATE OF ILLINOIS, } ss:
Franklin County, }

I, John Mulkey, master in chancery within and for said county and State, do hereby certify that the foregoing depositions were taken before me on the 6th day of June, 1882, and that all the interrogatories and answers were read to the witnesses by me after they were written down before they signed and were sworn to the same.

Given under my hand, at my office, in Benton, in said county, this 6th day of June, A. D. 1882.

JOHN MULKEY,
Master in Chancery.

And because the evidence and exceptions do not appear of record the court has caused the same to be hereby signed and sealed this 20th day of April, A. D. 1891, as of the day of rendering the abovementioned judgment.

W. Q. GRESHAM, *Judge.*

(Indorsed:) Filed April 20, 1891. James T. Jones, clerk.

233 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings therein had in a certain suit, wherein The German Savings Bank of Davenport, Iowa, is plaintiff and The County of Franklin is defendant, as truly and completely as the same appear of file and record in my office.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this nineteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the one hundred and fifteenth year.

JAMES T. JONES, *Clerk.*

234 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

To the German Savings Bank of Davenport, Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the eighteenth day of July next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein The County of Franklin, in the State of Illinois, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Hon. William J. Allen, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this nineteenth day of June, in the year of our Lord eighteen hundred and ninety-one, & of our Independence the 115th year.

WILLIAM J. ALLEN,
U. S. District Judge.

Service of this citation accepted this 20th day of June, 1891.

SAMUEL P. WHEELER,
Att'y for the German Savings Bank of Davenport, Iowa.

Endorsed on cover: S. Illinois C. C. U. S. No. 1234. The County of Franklin, in the State of Illinois, plaintiff in error, *vs.* The German Savings Bank of Davenport, Iowa. Filed June 29, 1891.

Office Supreme Court U. S.
FILED.
OCT 15 1891
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 1234.

THE COUNTY OF FRANKLIN, IN THE STATE OF ILLINOIS,
Plaintiff in error.
vs.
THE GERMAN SAVINGS BANK, OF DAVENPORT, IOWA,

In Error to the Circuit Court of the United States for the Southern District of Illinois.

Statement of the Case, Brief, and Argument for Plaintiff in Error.

DANIEL M. BROWNING,
WILLIAM S. CANTRELL,
Attorneys for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

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vs.

THE GERMAN SAVINGS BANK, OF DAVENPORT, IOWA,

In Error to the Circuit Court of the United States for the Southern District of Illinois.

Statement of the Case, Brief, and Argument for Plaintiff in Error.

STATEMENT OF THE CASE.

This is a suit in Assumpsit brought by the German Savings Bank of Davenport, Iowa, against the Plaintiff in error, at the January Term A. D. 1890, of the Circuit Court of the United States, for the Southern District of Illinois.

The Declaration alleges that "The County of Franklin on the 10th day of November A. D 1877, *the said defendant being thereunto duly authorized by an affirmative vote of the legal voters of said county as required by law, had prior to the second day of July A. D.* 1870, issued certain bonds to the Belleville and Eldorado Railroad Company in payment of its subscription to the capital stock of said company, viz; its series of bonds (100) one hundred in number, of the denomination of one thousand dollars each, numbered from 1 to 100 inclusive, reciting the numbers of the bonds and also the coupons detached from said bonds upon which a recovery is sought."

Also averring that the plaintiff became and was the owner of 20 of said bonds with coupons attached giving the numbers and description of said bonds and coupons, and that said bonds were on the first day of December A. D. 1877 duly registered in the office of the Auditor of Public Accounts in the State of Illinois, etc., and that the coupons sued upon are past due, and unpaid after demand having been made.

(For Declaration see Transcript of Record beginning on page 3.)

To this declaration a plea of non-assumpsit and a replication thereto were filed. A jury was waived and said cause was tried by the court, and judgment rendered on the 4th day of February A. D. 1891, in favor of the German Savings Bank for the sum of $5120,00 damages and costs of suit. In and by which said judgment it was provided that a writ of error should operate as a supersedeas without bond and that said cause should be submitted to the October Term A. D. 1891 of the Supreme Court of the United States, under the 20th rule of said court, to the rendition of which judgment the Plaintiff in error then and there excepted, and prosecute this writ of error.

The bonds with the coupons attached were issued on the 13th day of November A. D. 1877, and purported to be issued in pursuance of a vote of the people of said Franklin County had on the 11th day of September A. D. 1869. (For copy of bond see Transcript of Record page 120.)

On the 24th day of July A. D. 1869 the County Court of said Franklin County ordered an election to be held on the 11th day of September A. D. 1869. "Whether or not the County of Franklin shall subscribe the sum of $200,000,00 to the capital stock of the Belleville and

Eldorado Railroad Company. *Said bonds to be issued upon the following conditions and not until they are complied with.*"

One of the conditions being "*that said railroad shall be commenced within nine months from the date of said election and completed through the county by the 1st day of June A. D.* 1872."

(For this order see Transcript of Record page 123)

On the 6th day of November A. D. 1869 the county court of said county made an order reciting, "That at the election held on the 11th day of September A. D 1869, a majority of the legal votes were cast in favor of subscribing the stock to said railroad company, and providing "It is further ordered and considered by the court that said bonds are to be issued upon the following conditions, and never until they are complied with. That is to say that said railroad shall be commenced in the county of Franklin within 9 months from the date of said election and completed through said Franklin County by the 1st day of June A. D. 1872" and prescribing other conditions.

(For this order see Transcript of Record page 124.)

On February 6th A. D. 1871 the county court of said

county made an order reciting the fact "That the time had expired for commencing said railroad and providing that said railroad shall be commenced in said county on or before the 1st day of January A. D. 1872 and completed through the county by the 1st day of January A. D. 1874.

(See Transcript of Record page 125.)

On March 9th 1871 said county court made an order that the railroad be commenced within one year from date and completed within 3 years.

On June 5th A. D. 1872 the Board of Supervisors of said county refused to pass a resolution pledging the county to aid in the construction of said railroad etc.

(See Transcript of Record page 129.)

On the 5th day of December A. D. 1876 the Board of Supervisors of said county passed a resolution, reciting that there had been submitted to them a proposition to renew the county subscription to said railroad company but no action was taken on said proposition.

On December 13th A. D. 1876 the Board of Supervisors of said county made an order to subscribe $150,000.00 to the capital stock of said railroad company $75,000.

Each under "An act to authorize cities and counties to subscribe stock to railroads approved Nov. 6 A. D. 1849," and "An act to incorporate the Belleville and Eldorado Railroad Company." Approved February 22nd A. D. 1861, and again changing the terms and conditions of the subscriptions.

(See Transcript of Record page 130.)

There is no evidence showing, nor is it claimed that up to this date December 13th A. D. 1876, any subscription by the county had been made on the books of the railroad company or that the railroad company had in any way accepted such subscription or the terms and conditions thereof.

On November 12th A. D. 1877 said Board of Supervisors made another order amending its former order and subscribing $100.000 to said railroad company under the act of February 22nd A. D. 1861 and $50.000 under the act of Nov. 6th A. D. 1849.

(See Transcript of Record page 35.)

The foregoing are all the orders of the county court or Board of Supervisors of said county, relating to the subscribing to the capital stock of said railroad company

up to November 12th A. D. 1877. Several orders were afterwards made by them extending the time and prescribing conditions, etc.'

The evidence shows that said railroad was not commenced in said county prior to January A. D. 1877, and that it was not completed through the county until about November 1st A. D. 1879.

(See deposition of W. R. Ward in Transcript of Record page 158)

Upon the trial of this cause in the circuit court of the United States the German Savings Bank after presenting the bonds and coupons declared upon in the declaration introduced in evidence, a decree rendered in said circuit court together with the pleadings in said cause, and the evidence heard upon the trial of said cause, which is summarised as follows;

The bill was originally filed by the county of Franklin in the circuit court of Franklin County Illinois on the 4th day of August A. D. 1880, against the Belleville and Eldorado Railroad Company the clerk and collector of said county, the Auditor of Public Accounts of the State of Illinois, the State Treasurer and the unknown

holders of the bonds issued by said Franklin county in aid of said railroad company. The bill alleged the issuing by the county of $150,000 of its bonds dated November 13th A. D, 1877 to the Bellevilie and Eldorado Railroad Company and also set out the proposition upon which said bonds were pretended to be voted, and the orders of the county court and Board of Supervisors made in relation thereto, and the time said railroad was built, and concluded with the prayer that a writ of injunction issue restraining and enjoining the State Auditor, and his successors in office from estimating the rate per cent or the valuation of property with'n the said Franklin County, requisit to meet or satisfy the amount of interest due or to become due on said bonds, and that the various officers, be restrained from doing what would be necessary to collect said taxes, and that the owners and unknown holders of said bonds be enjoined from suing the county on any coupons of said bonds and that the payment of said coupons be enjoined and that upon a final hearing of said cause, a decree be entered declaring said election, and the bonds and coupons to be illegal and void.

(See Transcript of Record page 9.)

Service by publication was made on the unknown

holders of said bonds, and on the 27th day of October A. D. 1880 decree was taken by default. At the October Term A. D. 1881, of the Franklin County Circuit Court the German Savings Bank filed its answer to said Bill in Chancery alleging that it was the owner of certain bonds and coupons in said series of bonds which said bonds and coupons it had purchased without notice of any defects or defences thereto, and asking that said Complainants bill be dismissed for want of equity, and that the injunction heretofore granted may be dissolved so far as the same may be applicable, to the bonds and coupons held by this defendant.

(See Transcript of Record page 75.)

To which answer the county of Franklin filed a replication. At the said October Term A. D. 1881 of said court upon petition filed by the German Savings Bank said cause was removed to the circuit court of the United States for the Southern District of Illinois, other bond holders filed answers and cross bills, and said cause was submitted to said court and a decree rendered on the 3rd day of July A. D. 1883.

In said decree as to the bonds issued under the act of November 6th 1849 injunction was made perpetual, and

as to the bonds giving the numbers of the bonds held by the German Savings Bank, and by other parties appearing in the cause issued under the charter of said Belleville and Eldorado Railroad Company approved February 22nd A. D. 1861, the court doth decree in favor of said defendants, the said several respective holders thereof, and that the said several bonds and the coupons thereof, are valid and legal obligations against the county of Franklin, and as to last mentioned series of bonds and coupons thereunto attached, as held as aforesaid the court doth decree that the injunction issued on this cause be dissolved, and complainants bill be dismissed for want of equity."

(For this decree see transcript of Record Page 113).

This dismissal of Complainant's bill, applied to the 20 bonds held by the German Savings Bank and the 17 bonds held by other parties, who were represented in said cause, of the series of 100 bonds issued under the charter, approved February 22, A. D. 1861.

SPECIFICATION OF ERRORS.

There is manifest error in the record and proceedings of the court below in this :

FIRST.

That the court under the evidence presented, found the issues for the German Savings Bank and rendered judgment against the Plaintiff in error.

SECOND.

That the court held that the decree dismissing Complainant's bill for want of equity, was conclusive evidence of the validity of the bonds, notwithstanding the record in said cause presented, showed that the bonds were issued without authority of law.

BRIEF OF AUTHORITIES.

As to the right of the people at the time this election was held, in voting upon the question whether subscriptions should be made to Railroad Companies, to prescribe conditions under which the bonds might be issued. Section 17, chapter 113.

RAILROAD AND IMPROVEMENT AID BONDS.

Hurd's Statute of Illinois, on page 829, adopted April 16, 1869, in session laws, section 7, reads as follows:

"*Road Constructed. Election. Compliance.*—And it shall not be lawful to register any bonds, under the porvisions of this act, or to receive any of the benefits or advantages to be derived from this act, until after the rail-

road in aid of the construction of which the debt was incurred, shall have been completed near to, or in such county, township, city or town, and cars shall have run thereon; and none of the benefits, advantages or provisions of this act shall apply to any debt, unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township. city or town under the provisions of the laws of this state, and a majority of the legal voters living in said county, township, city or town were in favor of such aid subscription or donation; and any county, township city or town shall have the right, upon making any subscription or donation to any railroad company, to prescribe the condition upon which such bonds, subscriptions or donations shall be made, and such bonds, subscriptions or donations shall not be valid and binding until such conditions precedent, shall have been complied with, ect "

Provisions of the constitution of tye State of Illinois, which took effect July 2nd, 1870;

"No county, city, town, township or other municipality shall ever become subscribers to the capital stock of any railroad or private corporation, or make donation to or loan its credit, in aid of such corporation. Provided

however, that the adoption of this article shall not be construed as affecting the right of any such subscriptions when the same have been authorized under existing laws by a vote of the people of such municipality, prior to such adoption."

Bonds issued since the adoption of the constitution of Illinois, July 2nd, 1870, are *prima facie* invalid, and the burden of proof rests upon the plaintiff to show affirmatively that they were authorized by a vote of the people, prior to that time.

Jackson County vs. Brush et al. 77 Ill., page 59.

The People vs. Jackson County 92 Ill , page 441.

The People vs. Town of Bishop, 111 Ill., page 124.

Town of Prairie vs. Loyd 97 Ill., page 179.

Eddy vs. The People 127 Ill., page 428.

McClure vs. Township of Oxford 4th Otto, page 432.

Buchanan vs. Litchfield 12th Otto page 272

Bonds issued after the time fixed by the vote expires, and after the adoption of the constitution of 1870, are void even in the hands of innocent purchasers, County

authorities cannot extend the time, or change the conditions of the vote.

The German Savings Bank of Davenport, Iowa vs. The County of Franklin, Ill., 128 U. S. Supreme Court Report, page 526.

Richeson vs. The People, 115th Ill., page 450.

Eagle vs. Kohn. 83th Ill., page 292.

Eddy vs. The People. 127th Ill., page 428.

When a decree has been rendered that is not self-executing and the beneficiary thereof again goes into court for a completed remedy, the latter court will not enforce the decree if it appears erroneous.

Wadhams vs. Gay. 73rd Ill., page 415.

Story's Equity Pleadings, sections 429, 430, 431 and note A, ibid, section 641.

Where the payments of judgments rendered upon municipal bonds issued to a railroad company was sought to be enforced by a petition for a mandamus and it appeared that the bonds upon which the judgments were rendered were issued without authority of law the petition was denied.

The commissioners of the taxing district of the City of Brownsville, Tenn., vs. John ~~Teague~~ Teague 129 U. S. Supreme Court report page 493.

ARGUMENT.

The only election held in the County of Franklin upon the question of whether subscription should be made to the Belleville and Eldorado Railroad Company. and by virtue of which these bonds were pretended to be issued, was held on the 11th day of September A. D. 1869, and under the act of April 16th 1869, heretofore cited, which provides that the county had the right in voting for subscription, to prescribe the conditions upon which the subscription should be made, and that such subscription should not be valid and binding until such conditions were complied with.

And in the order for the election, the question submitted was whether stock should be subscribed "upon the following conditions and not until they were complied with." One of the conditions being. 'That said railroad shall be commenced within the County of Franklin within nine months from the date of said election, and completed through the county by the 1st day of June 1872."

And after the election was held and the county court

met to determine and record the result, the order of said court shows the conditions prescribed by the voters, and that said bonds were not to be issued until they were complied with.

We therefore insist, that these bonds issued in 1877, more than five years after the time for the completion of said railroad had expired, and the said railroad not having been commenced until the year 1877, are absolutely void.

The statute in force at the time these bonds were issued, as well as the constitutional provision, and the construction placed upon them by the Supreme Court of Illinois in Town of Eagle vs. Kohn 84 Illinois page 292, accompanied the bonds into the hands of the purchasers thereof, and the German Savings Bank cannot avoid the full knowledge of them that the law imputes.

In the case of Richeson vs. The People 115 Illinois on page 450, decided in January 1886, these bonds were held void, for the reasons suggested in this argument. After the decision of the Chancery case, heretofore referred to, the State Auditor and County Officials proceeded to extend taxes against the property of the people of the county to pay the interest claimed to be due upon these bonds,

and upon application to the county court for judgments against lands, Mr. Richeson, a citizen of the county, resisted the application for judgment against his real estate. Judgment was rendered against his lands and he appealed from the judgment of the county court to the Supreme court, where the judgment of the county court was reversed, and the entire issue of the bonds was held void.

In the case of the German Savings Bank vs. Franklin County, 128 U. S. 526, decided December 10th, 1888, the series of bonds issued by the county of Franklin under the act of November 6th, 1849, at the same time and upon the same conditions that the bonds in controversy were issued, was passed upon, and all of the laws and decisions fully reviewed and considered, including the Richeson case, Supra. which was approved and the bonds declared void, even in the hands of innocent purchasers.

The bonds, therefore, having been issued without authority of law and being void, we come to the question of the effect of the chancery case heretofore referred to.

The Auditor was proceeding to have taxes extended and collected for the payment of coupons upon these bonds as they became due, hence the necessity of the chancery proceeding for an injunction.

The German Savings Bank filed no cross bill in that case asking for affirmative relief, and in the answer prays that the complainant s bill be dismissed for want of equity and the injunction dissolved So that we insist that the words 'That the said several bonds and coupons thereof are valid, etc" written in the decree dismissing complainant's bill for want of equity, can give no additional effect to the order dismissing the bill.

The plaintiff below in the trial of the case now submitted, presented its bonds and coupons, showing that they were issued after the adoption of the constitution of 1870, and *prima facie* invalid. And to prove the allegation in its declaration, that said bonds were "duly authorized to be issued by an affirmative vote as required by law prior to the adoption of the constitution," introduces the records of the proceeding in the chancery case, including the bill and exhibits showing the terms prescribed by the vote upon which the bonds might be issued, the various orders of the county court and board of Supervisors, reciting that the building of the railroad had not been commenced, and extending the time when the work of building it should commence and when it should be completed, and insist that the decree dismissing complainant's

bill must be accepted by the court as conclusive evidence of the validity of the bonds, although the evidence presented by them and to which the attention of the court is invited, conclusively establishes the fact that the bonds were void and the decree erroneous.

See the case of Wadhams vs. Gay, 73rd Ill., 415.

A bill was filed for the purpose of determining the several interests and titles of heirs in real estate and to make partition thereof, a decree was rendered, declaring the title and interest of the respective heirs, and making partition among them, and the case went off the docket.

Afterwards a bill was filed by some of the parties in interest asking that an order be made that deeds be executed according to the respective interests of the parties, as decreed by the court. A decree was so rendered, and upon appeal to the Supreme court, the decree was reversed, because the court rendering the first decree had erroneously construed a will devising the real estate, and therefore the decree should not be enforced. The court holds: "That we are not bound to aid in enforcing an erroneous decree. It is so far as it has effect in reality a wrongful divestiture of property. *There is no ground in*

moral right, equity and conscience to call upon a court of equity to interpose and assist in carrying it into execution."

The only ground is that it stands a decree, a technical right, and the true nature of the application is to enforce a technical estoppel.

Of such estoppel Lord Coke said "They are odious."

The one in question is eminently of the kind alluded to in Jeten vs Hewitt 22nd Howard on page 344.

The res-adjudicata renders "white that which is black and straight that which is crooked."

At the time these bonds were issued the constitution prohibited a county from donating to,or loaning its credit in favor of railroad companies except where it was authorized to do so by a vote of the people prior to its adoption under existing laws, and there being no such authority here the bonds stand upon the same footing as forged instruments, and the county officers could not by indirection or by laches create an indebtedness against the people of the county to build a railroad

In the case of Brownsville vs. Loague 125 U. S. Supreme Court Report, page 493. This was a writ of error

to the Circuit Court for the western district of Tennessee bringing into review the judgment of that court, awarding a peremptory writ of mandamus against plaintiffs in error to levy and collect taxes to satisfy judgments.

Chief Justice Fuller in delivering the opinion of the court says:

"Petitioner in effect asked the court to order the levy of a tax to pay the coupons and relied on the judgments principally as creating an estoppel upon a denial of the power to do so. Thus invited to look through the judgments to the alleged contracts on which they are founded and finding them invalid for want of power, must we nevertheless concede to the judgments themselves such effect by way of estoppel as to entitle the plaintiff ex-debito-justitia to a writ commanding the levy of taxes under a statute, which was not in existence when these bonds were issued.

In the case at bar it appeared from the records, if not from the relator's petition, that the bonds were issued under an abrogated statute and were void because of a want of power, etc.

When the relator is bound to go behind his judg-

ments to obtain the remedy sought, the court cannot decline to take cognizance of the fact that the bonds are wholly void, res adjudicata may render straight that which is crooked etc.

But where application is made to collect judgments, by process not contained in themselves and requiring, to be sustained, reference to the alleged cause of action upon which they are founded, the aid of the court should not be granted, when upon the face of the record it appears not that mere error supervened in the rendition of such judgments but that they rest upon no cause of action whatever."

Reversed.

In the case at bar the German Savings Bank, to prove the validity of the bonds in question, introduced in evidence the records in the chancery case referred to including the Bill in Chancery, with exhibits, the orders of the county court and Board of Supervisors of said county, showing the election and terms prescribed by the voters, also the order made Dec. 13, 1876, showing that the railroad had not been commenced at that time, but giving thirty days from that date in which to commence the building thereof.

(See Transcript of Record beginning on page 28.)

Also the answer on page 75 to Complainant's Bill, admitting that the bonds were issued under these latter orders, extending the time for the building of the road. And after presenting this evidence to the court showing that the bonds were not merely issued without authority of law, but were prohibited by constitutional enactment, they ask the court to close its eyes to these facts and sustain the judgment. We insist that this is not the province of courts and that this judgment should be reversed.

DANIEL M. BROWNING,
WILLIAM S. CANTRELL,
Attorneys for Plaintiff in Error.

FILED,
NOV 21 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1234.

THE COUNTY OF FRANKLIN, IN THE STATE OF ILLINOIS, PLAINTIFF IN ERROR,

vs.

THE GERMAN SAVINGS BANK, OF DAVENPORT, IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

ARGUMENT IN REPLY FOR PLAINTIFF IN ERROR.

DANIEL M. BROWNING,
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Attorneys for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

THE COUNTY OF FRANKLIN, IN THE STATE OF ILLINOIS,
Plaintiff in Error.
vs.
THE GERMAN SAVINGS BANK, OF DAVENPORT, IOWA.

In Error to the Circuit Court of the United States for the Southern District of Illinois.

Argument in Reply for Plaintiff in Error.

We desire briefly to reply to some of the arguments presented by the attorneys for the Defendant in error.

They do not question the position taken by us that the coupons sued upon, and for which the judgment in this case was rendered, were issued without authority of law and void even in the hands of innocent purchasers but to sustain the judgment they rely upon the proceedings had in a Chancery case in the Circuit Court of the United States for the Southern District of Illinois at the June Term, A. D. 1882, wherein Franklin County was complainant and the Belleville and Eldorado Railroad Company et al were defendants. In that proceeding it appears that the Circuit Court dismissed complainant's bill as to the bonds involved in the present case. From the Brief and Argument for the defendant in Error it might be inferred that this action of the court was passed upon and affirmed by this court in the case of the German Savings Bank vs. The County of Franklin in 128 U. S. Supreme Court Report, page 526.

This is incorrect as will be seen by referring to that decision and the attention of the Court is invited to it.

The authorities cited in our former Brief sustain the position we assume and no authorities have been presented for the defendant in error in conflict with the doctrines there announced.

It is not our purpose to rediscuss the cases heretofore cited, but in a succinct manner to restate the questions involved in this suit. This is a suit in assumpsit upon coupons from bonds issued to the Belleville and Eldorado Railroad Company and purchased by defendant in error. The bonds were issued on the 10th day of November, A. D. 1877, more than seven years after the adoption of the Constitution which provided that "No County, City, Town, Township or other Municipality shall ever become subscribers to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation. Provided, however that the adoption of this article shall not be construed as affecting the right of any such subscriptions, when the same have been authorized under existing laws by a vote of the people of such municipality prior to such adoption."

Bonds so issued being prima facie invalid, and it devolving upon the defendant in error to prove that their issue was authorized under existing laws prior to the adoption of the Constitution, (see authorities cited on page 14 of our original brief); the defendant in error in its declaration alleges that they were issued by "The County of Franklin on the 10th day of November, A. D.

1877, the said defendant being thereunto duly authorized by an affirmative vote of the legal voters of said County as required by law, had prior to the second day of July, A. D. 1870."

To this declaration a plea of non-assumpsit and a general replication thereto were filed, and to prove the allegations in the declaration, the defendant in error introduced in evidence the records of the proceedings in a chancery case, including the bill of complaint, exhibits, the terms of the vote upon which the bonds purport to be issued, and the various orders of the County Court, and Board of Supervisors, and the time when the railroad was built, &c., and although this evidence presented by the defendant in error explicitly shows that these bonds were issued without any authority of law; but in direct opposition to the terms prescribed in the vote, which terms by statute they were authorized to prescribe, (see statute cited in original Brief on pages 12 and 15) and were prohibited by the constitution, yet the counsel for the defendant in error claim that the evidence further showing that the complainant's bill was dismissed for want of equity, that they have proven the allegation that these

bonds were issued by authority of law and are legal and binding obligations against the county.

The question at issue was were these bonds issued by authority of law, and the evidence presented by the defendant in error, and to which the attention of the Court was invited, having shown that they were not, but were absolutely void, that the Court should have so declared. There is no allegation in any of the pleadings in this case invoking the doctrine of Estoppel or Res Adjudicata, but the evidence introduced by the defendant in error was for the purpose of proving what the law required it to prove, that the bonds were issued under existing laws, and were authorized by a vote of the people of the County prior to the adoption of the Constitution, and this evidence having shown that they were not so issued, but were void; the Court should have found for the plaintiff in error.

A party cannot present evldence to a Court, thus vouching for its being true, and then ask the Court to disregard such portions of it as he may deem to be unfavorable to him.

Courts will examine the entire evidence, giving such

weight to each portion thereof as it may be entitled to, and decide the issues from the weight of the evidence as the truth may appear.

When an issue is formed the Court hears and determines as the truth may appear.

Mr. Herman in his work on Estoppel and Res Judicata, Section 17, says: "In the earlier history of the law, the doctrine of estoppels was more harshly and vigorously enforced; in fact it was a species of legal tyranny, by means of which the intervention of an estoppel excluded the truth in many cases where justice and equity required its admission, and it often became a preposterous and an absurd defense. The Courts of modern times, however, modified the doctrine, and the application of estoppels to consistency and in accordance with the law of common sense and justice, and Courts will be found to have been somewhat astute to reconcile the harsh doctrines of the earlier law with the substantial truth and justice of the cause."

There can be no estoppel when the truth appears in the same record. This doctrine is sustained by the authorities cited in our former Brief, and also, in Bigelow on Estoppel under the heading, "No Estoppel if truth

appears." On pages 263 and 265. "Also in Herman on Estoppel and Res Judicata Sections 31 and 74.

The defendant in error upon the evidence presented by it. having failed to establish the truth of its declaration, the judgment in this case should be reversed.

DANIEL M. BROWNING,
W. S. CANTRELL,
Attorneys for Plaintiff in Error.

Office Supreme Court U. S.
FILED.
NOV 9 1891
JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1234.

THE COUNTY OF FRANKLIN, IN THE STATE OF ILLINOIS,
Plaintiff in Error,

vs.

THE GERMAN SAVINGS BANK, OF DAVENPORT, IOWA.
Defendant in Error.

In Error to the Circuit Court of the United States for the Southern District of Illinois.

STATEMENT, BRIEF, AND ARGUMENT FOR DEFENDANT IN ERROR.

E. E. COOK,
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ROBERT FIDLAR & CHAMBERS, DAVENPORT, IOWA

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1234.

THE COUNTY OF FRANKLIN, IN THE STATE OF ILLINOIS,
Plaintiff in Error,

vs.

THE GERMAN SAVINGS BANK, OF DAVENPORT, IOWA.
Defendant in Error.

In Error to the Circuit Court of the United States for the Southern District of Illinois.

STATEMENT, BRIEF, AND ARGUMENT FOR DEFENDANT IN ERROR.

The German Savings Bank, of Davenport, Iowa, a corporation existing under the laws of Iowa, commenced its action (in assumpsit) at the January term, 1890, of the circuit court of the United States for the southern district of Illinois. The declaration (pages 3 to 6 of transcript) shows that on the 10th day of November, 1877, "the county of Franklin,

"being thereunto duly authorized by an affirmative vote of "the legal voters of said county, as required by law, had, "prior to the 2d day of July, 1870, issued certain bonds to "the Belleville & Eldorado Railroad Company in payment "of its subscription to the capital stock of said Belleville "& Eldorado Railroad Company, on its series of bonds, one "hundred in number, numbered from one to one hundred, "inclusive, for the sum of one thousand dollars ($1,000.00) "each, payable to said Belleville & Eldorado Railroad Com- "pany, or bearer, twenty years after date, etc."

It further states, in substance, that coupons were attached to said bonds for each semi-annual installment of interest as they should become due, the rate of interest being eight (8) per cent per annum, and each coupon being for the sum of forty dollars ($40.00); that the bank became the owner and bearer of certain bonds so issued, to-wit: Those numbered respectively eleven (11), twelve (12), fourteen (14), thirty (30), thirty-three (33), thirty-four (34), thirty-five (35), thirty-nine (39), forty-seven (47), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-two (62), sixty-three (63), sixty-six (66), seventy-seven (77), eighty-three (83), and eighty-five (85), together with the several interest coupons thereto attached; and at the time of the commencement of the suit was, and still is, the owner and bearer of the one hundred and twenty-eight (128) interest coupons of the said bonds, overdue and payable at the commencement of the suit as particularly specified in the declaration. A copy of one of the coupons set out at the top of page 5 of the transcript is as follows:

"STATE OF ILLINOIS.

"The county of Franklin will pay to bearer, at the place "in the city of New York where the treasurer of the state "of Illinois pays the interest on the state debt, the sum of

"forty dollars ($40.00), on the first day of July, A. D. 1886,
"being six month's interest on bond No. eleven (11) issued
"under act approved February 22d, A. D. 1861.
"No. 11. "EVAN FITZGERRALL,
"*Clerk of Board.*"

The declaration further states the registration of the bonds in the office of the auditor of public accounts in the state of Illinois, and makes all other averments necessary to entitle the bank to a judgment for five thousand one hundred and twenty dollars ($5,120.00) upon proof of the averments in the declaration. To the declaration a plea of non-assumpsit and a replication thereto were filed, a jury was waived by written stipulation duly filed (page 7 transcript), and said cause was tried by the court (before the Hon. Walter Q. Gresham, Circuit Judge), and judgment was rendered in favor of the bank for the sum of five thousand one hundred and twenty dollars ($5,120.00) damages, and costs of suit. Said judgment provided that the writ of error should operate as a supersedeas without bond, and that the case should be submitted at the October term, 1891, of the supreme court of the United States, under the twentieth rule of said court.

The bank introduced in evidence the record and decree in a certain proceeding in chancery in the circuit court of the United States for the southern district of Illinois, wherein the county of Franklin was complainant, and the Belleville & Eldorado Railroad Company, and numerous other parties, including the German Savings Bank, of Davenport, Iowa, were defendants. The bill in that case is set forth in the transcript at pages 9 to 27. That bill was originally filed by the county of Franklin in the circuit court of Franklin county, Illinois, on the 4th day of August, 1880. It made defendants the Belleville & Eldorado Railroad Company, the clerk, sheriff, and collector of Franklin

county, the auditor of public accounts of the state of Illinois, the state treasurer of Illinois, several private individuals, and the unknown holders of the bonds of Franklin county. The bill shows that the county had issued one hundred and fifty thousand dollars ($150,000.00) of its bonds, dated the 13th day of November, 1877, to the Belleville & Eldorado Railroad Company. One hundred thousand dollars ($100,000.00) were subscribed and issued under an act of the general assembly of Illinois, entitled "An act "to incorporate the Belleville & Eldorado Railroad Com- "pany," approved February 22d, A. D. 1861, authorizing subscription to the capital stock of said railroad; and fifty thousand dollars $50,000.00 were subscribed and issued under an act of the general assembly, entitled "An act to authorize cities and counties to subscribe stock to the rail- "road," approved November 6th, 1849.

The bill alleges that both classes of bonds were subscribed and issued in pursuance of the vote of the people of the county at an election held on the 11th day of September, 1869. The bill also alleges that the order of the county court (entered July 24th, 1869,) submitting the proposition to the voters to be voted on named certain conditions to be complied with before the bonds should be issued. One of the conditions was that the railroad should be commenced in the county of Franklin within nine months from the date of the election, and completed through the county by the 1st day of June, 1872. On the 6th day of November, 1869, the county court made an order declaring that the majority of the voters at the election held September 11th, 1869, voted in favor of the proposition to subscribe two hundred thousand dollars ($200,000.00) to the capital stock of said railroad company; and that court, by the same order, ordered a subscription of two hundred thousand dollars ($200,000.00) of the stock, viz.: One hundred thousand dollars ($100,000.00)

under each one of the acts of the legislature already referred to, and incorporated in such order for subscription all the conditions contained in the order for the election. Several orders were made by the county court, and subsequently by the board of supervisors, extending the time of commencing and completing the railroad and reducing the amount of subscription; all purported to be done in pursuance of the election of September 11th, 1869.

The bill further alleges that on the 12th of November, 1877, the board of supervisors made an amended order (pages 15–18, transcript), whereby Franklin county subscribed one hundred thousand dollars ($100,000.00) to the capital stock of the railroad company under the act of February 22d, 1861, and fifty thousand dollars ($50,000.00) under the act of November 6th, 1849, and that in accordance therewith the bonds in controversy were issued.

The bill also alleges that the above orders submitting the question to the voters were never complied with, and particularly that the railroad was not completed within the time provided. That all of the orders and resolutions of said county court and the board of supervisors subscribing, or attempting to subscribe, stock to said railroad company are in conflict with the constitution of the state of Illinois, and are void; that the subscription made on the 6th day of November, 1869, if lawfully made at all, exhausted all the powers of the county under the vote at said election, and that all subsequent attempts to make other subscriptions were utterly null and void; that the state auditor has no right to levy taxes for the purpose of paying the interest or principal of said bonds, and that the state treasurer has no right to receive or pay out the said taxes, but that both will do so unless restrained. That sections 13, 14, 15, and 16, to fund and provide for paying railroad debts of counties, approved April 16th, 1869, are unconsti-

tutional, and contrary to public policy, and void. The bill prays that a writ of injunction may issue restraining and enjoining the state auditor and his successors in office from estimating or determining the rate, per cent, or valuation of property within the said Franklin county requisite to meet and satisfy the amount of interest due, or to become due, on said bonds, and prays that the various officers be restrained from doing what would be necessary to collect said taxes. That the individual defendants and unknown holders of bonds be enjoined from suing the county on any of the coupons of said bonds, and that the payment of said coupons be enjoined, and that upon final hearing in said cause a decree be entered that said election, held on the 11th day of September, 1869, was illegal and void; that the subscription made by the county court on the 6th day of November, 1869, to the capital stock of the said railroad company, and all subscriptions or amendments, modifications, or alterations are void, and not binding upon said county; that the so-called subscription of one hundred and fifty thousand dollars ($150,000.00) to said capital stock, made on the 13th day of December, 1876, and the attempt made by said county board on the 12th day of November, 1877, to amend said subscription and contract for the completing of said railroad, is unlawful and void; that said bonds, and each of them, be declared void; that all the coupons attached to said bonds be declared void, and the holders thereof required to surrender the same for destruction, and that the injunction above prayed for be made perpetual and for general relief.

A temporary writ of injunction was issued as prayed. Service by publication was made on the unknown holders of bonds. On the 27th day of October, 1880, decree was taken by default. At the October term, 1881, the German Savings Bank, of Davenport, Iowa, and others, appeared in the circuit court of Franklin county, Illinois, had the decree

opened, and removed the case to the circuit court of the United States for the southern district of Illinois. Before the German Savings Bank filed its petition and bond for removal, it filed its answer to the bill (pages 75–81, transcript). Other bond-holders filed answers and cross-bills, and in the circuit court of the United States the case was submitted thereon, and the proofs taken by all the parties, and upon the certain stipulation that each defendant is, and was at the commencement of the said suit, the bona fide holder of the bonds as set up and specified in the respective answers; that they purchased the same for value without any notice of defense. This stipulation is printed at pages 96–97 of the transcript.

The answer of the German Savings Bank (which was adopted by other defendants as far as applicable) put in issue every material averment of the bill, and prayed that as to the bonds and coupons held by it, complainant's bill might be dismissed for want of equity, and that the injunction might be dissolved, etc. On the 3d day of July, 1883, a decree was entered declaring that all the bonds involved in the cause and purporting on their face to have been issued under the provisions of the railroad act of NOVEMBER 6TH, 1849, were issued *without* authority of law, and are therefore void, and ordering and decreeing as to such holders of said bonds, that the injunction theretofore issued be made perpetual. And the same decree provided that as to the specific bonds designated by their numbers, and among others the bonds belonging to the German Savings Bank, of Davenport, Iowa, "purporting on their face to be "of the series issued under the charter of said Belleville & "Eldorado Railroad Company, approved February 22d, "A. D. 1861, the court doth decree in favor of said de-"fendants, the said several respective holders thereof, and "that the said several bonds and the coupons thereof *are* "*valid and legal obligations against the county of Franklin:*

"and as to said last named series of said bonds and coupons "thereunto attached as held as aforesaid, the court doth de- "cree that the injunction issued in this cause be dissolved, "and *complainant's bill be dismissed for want of equity.*" (This decree at pages 113–114 of transcript.)

The said German Savings Bank, in June, 1885, appealed from this decree, seeking to reverse it so far as it adjudged that its nine bonds issued under the act of 1849 were void. The county of Franklin did not appeal from the decree establishing the validity of the bonds issued under the act of 1861. This court affirmed the decree of the circuit court, and the case is reported in *128 U. S., page 526.* The mandate of the supreme court, introduced in evidence, will be found at pages 118–120 of the printed transcript, and was filed in the circuit court on the 6th of August, 1889. After the German Savings Bank (plaintiff) had introduced the said record, decree, and mandate in the equity cause, it introduced in evidence the eighteen (18) bonds which had been decreed, with the coupons thereof, to be valid and legal obligations against the county of Franklin; and also introduced in evidence all the coupons of said bonds described in the declaration, and also two coupons cut from bonds numbered eighty-three (83) and eighty-five (85), which bonds and coupons had also been adjudged by said decree to be valid and legal obligations against the county of Franklin (pages 120–122, transcript). The defendant introduced no evidence, but claimed that the evidence contained in the record in the cause in equity of the county of Franklin *vs.* The Belleville & Eldorado Railroad Company, and others, introduced by the plaintiff, showed that the bonds and the coupons therefrom, upon which this action was brought, were invalid. The plaintiff contended that the validity of said bonds and coupons had been established in the said equity cause, and that the question was *res adjudicata;* and the court below so decided.

BRIEF OF POINTS AND AUTHORITIES.

FIRST.

The decree which was entered in the circuit court of the United States for the southern district of Illinois, and affirmed by this court, wherein the county of Franklin, Illinois, was complainant, and the German Savings Bank of Davenport, Iowa, was (with other parties) defendant, expressly adjudicated the validity of the coupons (and the bonds from which they are detached) involved in this action, and dismissed complainant's bill for want of equity.

Such adjudication is a bar or estoppel which prevents the county of Franklin from asserting in this action the invalidity of such coupons, or of the bonds from which they are detached.

Durand v. *Essex Company*, 7 Wall., 107.
Lyon v. *Perrin Manfg. Co.*, 125 U. S., 698.
Hopkins v. *Lee*, 6 Wheat., 109.
Thompson v. *Roberts*, 24 Howard, 233.
Cromwell v. *County of Sac*, 94 U. S., 351.
Wilson's Executor v. *Deen*, 121 U. S., 525.
Bissell v. *Spring Valley Township*, 124 U. S., 225.
Aurora City v. *West*, 7 Wall., 82.
Lumber Company v. *Buchtel*, 101 U. S., 638.
Laird v. *City of De Soto*, 32 Fed. Rep., 652.

SECOND.

The question of the validity of these bonds and coupons, independent of the effect of the decree presented in the argument for plaintiff in error, does not require discussion, because the decree is final and conclusive in favor of the defendant in error as to their validity.

The case of *Wadhams* v. *Gay*, 73 Ill., 415, cited in argument for plaintiff in error, does not apply to the question here presented; and Sections 429, 430, 431, and 641 of Story's Equity Pleadings, cited in said argument, will be found to have no application to such a decree as defendant in error relies upon.

The case of *Brownsville* v. *Loague*, 129 U. S., 493 (also cited in said argument), pertains exclusively to the remedy by mandamus: the only *remedy* which defendant in error in that case had (as shown by his petition), was given by the act under which the bonds purported to be issued, and that act had been repealed before the vote was taken in pursuance of which the bonds were issued.

The case only decides that the judgments on the coupons did not create an estoppel to deny the power to levy a tax to pay the coupons under the peculiar facts of that case; and the judgments previously rendered were not annulled or disregarded. But in the pleadings on which the judgments there were founded, the question of the capacity of the city of Brownsville to contract the indebtedness was not put in issue, while in the cause in equity upon which the decree relied upon here was rendered, that issue was presented and decided; and the declaration in this case avers the authority of the county to issue the bonds and coupons, and the record and decree in the equity cause conclusively prove it.

The case of *Harshman* v. *Knox County*, 122 U. S., 306, would be applicable here if the question as to the remedy upon the judgment should arise, but that question is not now before the court, and probably can never arise.

No principle can be extracted from the case of Brownsville vs. Loague which could justify a decision that the de-

cree here relied upon shall not have full force as a former adjudication of the validity of these bonds, because the court in which this action at law was tried, upon the same evidence which was the foundation of the decree, might have reached a different result in the absence of such decree.

ARGUMENT.

FIRST.

The sole question presented in this case is as to the effect of the decree rendered by the circuit court of the United States for the southern district of Illinois in the equity cause referred to in the preceding statement, which decree was affirmed by this court. The bill in that proceeding sets up with great minuteness and detail all the acts and proceedings which preceded the issuing of the bonds, recites the various laws under which the right to issue the bonds was claimed, and asks the surrender and cancellation of the bonds upon the grounds that the various official acts of the board of supervisors were unauthorized and void, and that certain legislation was unconstitutional. Every point which might possibly have been set up as a defense by the county in an action at law upon the bonds and coupons was urged in the bill in equity as a ground for cancelling the bonds and perpetually enjoining the holders thereof from commencing action thereon. The entire question of the validity of the bonds was presented and tried upon the merits in the equity cause referred to, and a final decree was entered in that cause, not only dismissing the complainant's bill for want of equity so far as the bonds now in controversy are concerned, but expressly finding, as to the particular bonds and the coupons thereto attached, upon which coupons this suit is brought, in favor of the defendants in that action in the following words: "And as to * * * "bonds Nos. eleven (11), twelve (12), fourteen (14), thirty

"(30), thirty-three (33), thirty-four (34), thirty-five (35), "thirty-nine (39), forty-seven (47), fifty-six (56), fifty-seven "(57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-two "(62), sixty-three (63), sixty-six (66), and seventy-seven "(77), belonging to the German Savings Bank of Davenport, "Iowa, purporting on their face to be of the series issued "under the charter of said Belleville & Eldorado Railroad "Company, approved February 22d, A. D. 1861, the court "doth decree in favor of said defendants, that said several "respective holders thereof, and that the said several bonds "and the coupons thereof, are valid and legal obligations "against the county of Franklin; and as to said last-men- "tioned series of said bonds, and coupons thereunto attached, "as held as aforesaid, the court doth decree that the injunc- "tion issued in this cause be dissolved, and complainant's "bill be dismissed for want of equity." (Pages 113 and 114, transcript).

The eighteen (18) bonds so expressly adjudged to be valid and legal obligations against the county of Franklin, as between that county and the German Savings Bank, are the eighteen identical bonds from which all the coupons now in suit were taken, excepting two (2) coupons cut from bonds numbered eighty-three (83) and eighty-five (85), and in the same decree these two bonds and the coupons therefrom, then belonging to the People's Savings Bank of Evansville, were adjudged to be valid and legal obligations against said county.

Upon the issues presented and the relief asked in that cause a decree dismissing the bill for want of equity would have been sufficient to constitute a former adjudication as to the validity of the bonds and coupons. But in addition to so dismissing the bill, the decree expressly finds and adjudicates that the said bonds and coupons thereof are valid and legal obligations against the county of Franklin. The

principle cannot be questioned that a judgment of a court of competent jurisdiction upon a question necessarily involved in a suit is conclusive in a subsequent suit between the same parties depending upon the same question; and in respect to this quality of conclusive effect upon parties and privies, the decrees of courts of equity upon matters within their jurisdiction stand upon the same footing with judgments at law. The question is not what the court might have decided in a former action between the parties, but what the court did in fact decide as shown by the record. By the decree referred to the court did not simply dismiss the bill for want of equity, but it directly and positively adjudicated the question as to the validity of all the bonds involved in that cause. The question of the validity was the question in the cause, and the court had jurisdiction to decide it. Two classes of bonds were involved in that decree, and the court expressly found and held that one class of bonds was void and invalid, and made the injunction against them perpetual, thus finally ending the controversy as to them. As to certain of the other class of bonds, being the same from some of which are taken the coupons now in controversy, the court expressly found and adjudged that they were valid and legal obligations, and such decree was equally final and conclusive as to the character of those bonds. Even if it should be held that technically the decree might have been erroneous in expressly holding that the bonds and coupons were "valid and legal obligations," yet that would be an error which could be corrected only by a direct proceeding, and cannot now be complained of. However, the decree was not technically erroneous in expressly declaring that these bonds and coupons were valid and legal obligations against the county of Franklin, because the very question presented to the court was in regard to such validity, and the decree properly adjudicated *such validity* by express words, as it had by express words decreed the *invalidity* of the other class of

bonds. The county of Franklin filed its bill in equity for the express purpose of determining the validity of those bonds. It might have waited until an action at law had been brought against it, and set up its defenses thereto. Such a course would have involved the county in a multiplicity of suits, and it properly chose its remedy in a court of equity. It brought the various holders of the bonds into court as defendants in that cause, and alleged against them, as a basis for the affirmative relief by injuction and cancellation of the bonds, precisely the same matters which it might have shown as a defense to an action at law brought against it by the defendants on the bonds and coupons. Why should not an adjudication as to the validity of these bonds in a forum which the county had chosen be a solemn adjudication as binding upon all parties thereto as a judgment which might have been entered in an action at law? The declaration in this case avers that "the county of "Franklin, being thereunto duly authorized by the affirma- "tive vote of the legal voters of said county, as required by "law had, prior to the second day of July, 1870, issued "certain bonds to the Belleville & Eldorado Railroad Com- "pany in payment for its subscription to the capital stock "of the said Belleville & Eldorado Railroad Company, on "its series of bonds, one hundred in number." * * * The declaration then describes the coupons attached to said bonds, and avers the ownership thereof by the plaintiff. These averments being put in issue by the defendant, the plaintiff was obliged to prove them, and it does so by introducing in evidence the record, decree, and mandate in the cause in equity. That record contained all of the evidence upon which the court was authorized to render a decree finding the bonds and coupons to be valid or invalid, as the court might think the facts and the law required. The decree of the court adjudged the bonds and coupons to be valid, and the plaintiff in this action relies upon the decree so *based upon that evidence* as a final adjudication of the validity of the bonds.

The defendant (plaintiff in error) assumes this singular position, viz.: The plaintiff, in order to prove the former adjudication and show the identity of the questions involved, has introduced the record of all the evidence upon which that decree was rendered; and now the defendant claims that the evidence introduced in the proceeding in equity, and on which the decree was based, makes it appear that the decree should have been otherwise, and asks the court in this law action to ignore the decree formerly rendered by the court in equity upon such evidence, and render a judgment in favor of the defendant upon precisely the same evidence. The result of the defendant's contention would be that in every case where former adjudication was pleaded, and the record should show the evidence upon which the judgment or decree was based, the court trying the second controversy between the parties would have the right to render a different judgment upon the same evidence. Such a doctrine would effectually dispose of the whole subject of former adjudication.

It seems hardly necessary to cite authorities in support of the position of the defendant in error in this case, but reference is made to some of the decisions of this court.

In the case of *Durand* v. *Essex Company*, 7 Wall., 107, it was held that the decree dismissing the bill in an equity suit in the circuit court of the United States, which is absolute in its terms, unless made upon some ground which does not go to the merits, is a final determination of the controversy, and constitutes a bar to any further litigation of the same subject between the same parties. To the same effect, see *Lyon* v. *Perrin Manufacturing Company*, 125 U. S., 698.

Hopkins v. *Lee*, 6 Wheat., 109, was an action of covenant brought by Lee against Hopkins to recover damages for not

conveying certain tracts of military lands which Hopkins had agreed to convey upon Lee relieving certain incumbrances upon the property. The declaration set forth the covenant and averred that Lee had completely removed the incumbrance. This was denied. Lee, in order to prove that the incumbrance was removed, offered in evidence the record in a proceeding in chancery on a bill filed against him in the circuit court by Hopkins. The opinion, after stating that the first question which the court has to consider is whether the proceedings in chancery were properly admitted in evidence in the court below, proceeds as follows (pages 113 and 114): "Hence a verdict and judgment "of a court of record, or a decree in chancery, although "not binding on strangers, puts an end to all further con- "troversy concerning the points thus decided between the "parties to such suit. In this there is, and ought to be, no "difference between a verdict and judgment in a court of "common law and a decree of a court of equity. They "both stand on the same footing, and may be offered in "evidence under the same limitations, and it would be "difficult to assign a reason why it should be otherwise. " * * * Under this rule, the decree in this case was "proper evidence, if it decided, or professed to decide, the "same question which was made on the trial at law. For "to points which came only collaterally under considera- "tion, or were only incidentally under cognizance, or could "only be inferred by arguing from the decree, it is admitted "that the rule does not apply. On a reference to the pro- "ceedings at law, and in chancery, in the case now before "us, the court is satisfied that the question which arose on "the trial of the action of covenant was precisely the same, "if not exclusively so (although that was not necessary), "as the one which had already been directly decided by the "court of chancery."

In the case of *Thompson* v. *Roberts*, 24 How., 233, the court held that the general rule of law is that a judgment

of a court of law or a decree in a court of equity directly upon the same point, and between the same parties, is good as a plea in bar, and conclusive when given in evidence in a subsequent suit. Also, that the parties to the suit at law having been parties to the suit in equity, the subject-matter and defense being the same, it is not a sufficient objection to the introduction of the record in the equity suit that other persons were parties to the latter; and that no good reason can be given why the parties to the suit at law who litigated the same question should not be concluded by the decree because others having an interest in the question or subject-matter were admitted by the practice of a court of chancery to assist on both sides.

Cromwell v. *County of Sac*, 94 U. S., 351, is a leading case which clearly defines the difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. The action was on four bonds of Sac county, Iowa, and four coupons for interest attached to them. To defeat the action the defendant relied upon the estoppel of a judgment rendered in favor of the county in a prior action brought by one Samuel C. Smith upon certain earlier maturing coupons on the same bonds, accompanied with proof that the plaintiff, Cromwell, was at the time the owner of the coupons in that action, and that the action was prosecuted for his sole use and benefit.

Mr. Justice Field, delivering the opinion of the court, says (pages 352–353): "In considering the operation of "this judgment, it should be borne in mind, as stated by "counsel, that there is a difference between the effect of a "judgment as a bar or estoppel against the prosecution of "a second action upon the same claim or demand, and its

"effect as an estoppel in another action between the same "parties upon a different claim or cause of action. In the "former case the judgment, if rendered upon the merits, "constitutes an absolute bar to a subsequent action. It is "a finality as to the claim or demand in controversy, con- "cluding parties and those in privity with them, not only "as to every matter which was offered and received to sus- "tain or defeat the claim or demand, but as to any other "admissible matter which might have been offered for that "purpose. Thus, for example, a judgment rendered upon "a promissory note is conclusive as to the validity of the "instrument and the amount due upon it, although it be "subsequently alleged that perfect defences actually existed, "of which no proof was offered, such as forgery, want of "consideration, or payment. If such defences were not "presented in the action and established by competent "evidence, the subsequent allegation of their existence is "of no legal consequence. The judgment is as conclusive, "so far as future proceedings at law are concerned, as "though the defences never existed. The language, there- "fore, which is so often used, that a judgment estops not "only as to every ground of recovery or defence actually "presented in the action, but also as to every ground which "might have been presented, is strictly accurate when ap- "plied to the demand or claim in controversy. Such de- "mand or claim having passed into judgment, cannot again "be brought into litigation between the parties in proceed- "ings at law upon any ground whatever. But where the "second action between the same parties is upon a different "claim or demand, the judgment in the prior action "operates as an estoppel only as to those matters in issue "or points controverted upon the determination of which "the finding or verdict was rendered. In all cases, there- "fore, where it is sought to apply the estoppel of a judg- "ment rendered upon one cause of action to matters arising "in a suit upon a different cause of action, the inquiry must

"always be as to the point or question actually litigated and "determined in the original action, not what might have "been thus litigated and determined. Only upon such "matters is the judgment conclusive in another action."

Applying either of these tests to this case, the result sustains the judgment rendered in favor of the bank. We submit that the precise question determined by the decree in equity was as to the validity of the specific bonds and coupons in controversy in this action, and that the decree rendered upon the merits establishing such validity is an absolute determination of the question of such validity in this action, and concludes the defendant not only as to every matter which was offered and received to sustain the claim of the invalidity of the bonds, but as to any other admissible matter which might have been offered for that purpose. But if this second action between the same parties could possibly be held to be upon a different claim or demand, yet the decree in the cause in equity certainly operates as an estoppel as to those matters in issue, or points controverted, upon the determination of which the decree was rendered. Every matter in issue, or point controverted, relative to the bonds and coupons now in controversy in the cause in equity was determined against Franklin county upon the merits, and no other point or issue is now presented by the county. Therefore, if the decree should be held to operate as an estoppel only as to the matters in issue, or points controverted, upon the determination of which the finding or decree was rendered, it is equally as effective as if it should be held to be a bar or estoppel against the defense set up in the second action upon the same claim or demand.

The same decree which established the validity of the bonds and coupons now in controversy pronounced void nine (9) bonds of one thousand ($1,000.00) each held by

the German Savings Bank against Franklin county, issued under the law of 1849. If the bank should now sue at law upon those bonds and coupons so adjudged to be invalid, can there be the slightest doubt that the county could plead the decree as a bar or estoppel against the prosecution of the action upon the ground that it was upon the same precise claim or demand which was involved in a former suit? Clearly the bar would be perfect. It seems to be equally clear that the next clause of the decree, wherein "the court "doth decree in favor of said defendants, the said several "respective holders thereof, and that the said several bonds "and the coupons thereof are valid and legal obligations "against the county of Franklin; and as to said last-men-"tioned series of said bonds and coupons thereunto at-"tached, as held as aforesaid, the court doth decree that "the injunction in this cause be dissolved and complainant's "bill be dismissed for want of equity," must have precisely the same legal effect as the adjudication in the previous clause declaring the bonds issued under the act of 1849 to be invalid.

In the case of *Wilson's Executor* v. *Deen*, 121 U. S., 525, it was held that a judgment rendered on the merits in an action in a court of record is a bar to a second suit between the same parties on the same cause of action; and when the second suit involves other matters as well as the matters in issue in a former action, the former judgment operates as an estoppel as to those things which are in issue there and upon the determination of which the first verdict was rendered. The opinion in this case, also delivered by Mr. Justice Field, is valuable as showing the application of the doctrine in *Cromwell* v. *County of Sac*, supra.

In the case of *Bissell* v. *Spring Valley Township*, 124 U. S., 225, in which the opinion was also delivered by Mr. Justice

Field, is also valuable as showing the true application of the doctrine of *Cromwell* v. *County of Sac;* and, without commenting in detail upon the case, we invite the special attention of the court to it. See also —

Aurora City v. *West*, 7 Wall., 82.
Lumber Company v. *Buchtel*, 101 U. S., 638.

Mr. Justice Brewer, in the case of *Laird* v. *City of De Soto*, 32 Fed. Rep., 652, comments upon the rule in *Cromwell* v. *Sac County*, and other decisions of this court, and on page 654 says: "But in any event, when the record of a case "shows that a question must necessarily have been decided "before the judgment which was rendered could have been "rendered, it is conclusive in all subsequent litigation upon "the fact that that question has been litigated and decided, "and the party may invoke that decision upon the prin- "ciple of *res judicata*."

SECOND.

The attorneys for the plaintiff in error devote a considerable part of their argument to the discussion of the question of the validity of these bonds and coupons, independent of the effect of the decree. It is substantially the same argument which was made before the court which rendered the decree establishing the validity of the bonds, and the effect of such argument here is merely to show that the decree was erroneous. If there was error in the decree, it could have been corrected by appeal; but said appeal was not taken, and the decree is final and conclusive upon the question of the validity of these bonds and coupons, and we are not called upon to discuss the question of their validity as an original proposition. The argument for the plaintiff in error upon the question of the effect of the decree cites the case of *Wadhams* v. *Gay*, 73 Ill., 415. There was an original bill to carry a former decree into execution. The

former decree was in relation to the partition of an estate. On page 425 the court say: "The decree in partition did "not proceed upon the judgment of the court exercised as "to the rights of the parties, but it purported to be solely "upon the consent of Charles D. Flagler, contained in his "answer to the bill. If he in fact never gave any such "consent, nor ever intended to do so, but the contrary, then "the decree cannot be deemed fair and just." Upon pages 428 and 429 the court considered the effect of this consent decree, and whether a court of equity should lend its aid in carrying it into execution or give relief which would be tantamount to that. The effect of a decree in partition is considered. On page 435 the court say: "We do not re- "gard that it militates with the doctrine of the conclusive "effect of what is *res adjudicata;* that where there is an in- "complete decree, and it is ineffective for want of the pro- "vision of any means for its execution, and an application "is made to a court of equity to supply the imperfection so "as to render the decree effective, that then it is admissible "to look at the real nature and character of the decree as "it may appear in the light of surrounding circumstances, "for the purpose of determining whether there is such an "equitable ground for action as will move a court of equity "to interpose. Equity will penetrate beyond the covering "of form and look at the substance of a transaction, and "treat it as it really and in essence is, however it may seem." Walker, C. J., and Craig, J., dissented. And in the opinion of the court, on page 431, it is stated that "there are, it is "admitted, authorities the other way on this subject."

Conceding that the case was rightly decided, it has no application to this case. The German Savings Bank is not applying to a court of equity to have a former decree carried into execution. The former decree, upon which the bank relies, was rendered in a cause where the question of the validity of the bonds now in controversy was fully litigated,

and they were declared to be valid and legal obligations against the county of Franklin, and the bill filed by the county to enjoin the collection of the bonds and to cancel them was dismissed for want of equity. The bank sues at law to recover a judgment on the coupons so declared to be valid, and puts in evidence the decree and the entire record in the equity cause for the purpose of proving that the validity of its coupons has already been solemnly adjudged in a litigated proceeding between itself and the county.

Referring to *Story's Equity Pleadings, Sections 429, 430, 431, and 641,* cited in the argument for plaintiff in error, it will be found that they have no application to a decree such as the bank relies upon in this case.

The argument for plaintiff in error also refers to the case of *Brownsville* v. *Loague,* 129 U. S., 493. In that case the bonds and coupons were issued under an act of the general assembly of the state of Tennessee, passed February 8th, 1870. Judgments were obtained against the city of Brownsville upon certain coupons, executions returned *nulla bona,* and proceedings instituted to compel by mandamus the levy and collection of a tax to satisfy the judgments. The law was abrogated by the taking effect, on the 5th of May, 1870, of the new state constitution; and this was before the bonds had been voted for or issued. The act of February 8th, 1870, was the only one authorizing the issue of the bonds, and at the same time authorizing the levy of the tax to pay the principal and interest. This court held in the case of *Norton* v. *Brownsville,* 129 U. S., 479, and also in case of *Brownsville* v. *Loague,* that the act of February 8th, 1870, was abrogated by the constitution adopted May 5th, 1870. Therefore no authority existed, at the date the bonds were issued, to levy a tax. This was the issue presented by the relator, and decided the whole case, denying the remedy sought. As the power to issue the bonds was given by the

same act authorizing the levy of the taxes, the provisions of which the relator had invoked, and the act having been abrogated, as already shown, it follows as a necessary corollary that the bonds themselves were issued without authority. Had the mandamus been asked to a judgment merely, it would have been a complete answer thereto that no power existed when the debt was contracted, or after, to levy a tax for such purpose. But the petition went further, and asked for the levy of a tax to pay the bonds themselves.

The petition for mandamus alleged that "petitioner's "*only remedy to enforce the collection of his judgments is that* "*awarded by the act authorizing the issue of the bonds from* "*which the coupons were detached upon which said judgments* "*were obtained.*"

This court said (pages 502 and 503): "Under the legis- "lation between the issue of the bonds in 1870 and this "application in March, 1886, authority to levy taxes to pay "debts of the character represented by these judgments, "when uncompromised, did not exist at the latter date, so "that plaintiff was remitted in the assertion of a right to "that remedy to the time when the bonds were issued, and "as the city had then no power to tax to pay them *other* "*than that derived from the act of February 8th, 1870*, the "relator *by his pleadings* opened the facts which attended "the judgments for the purpose of counting upon that act "as furnishing the remedy which he sought. In this he in "effect asked the court to order the levy of a tax to pay the "coupons, and relied on the judgments principally as creat- "ing an estoppel upon a denial of the power to do so."

On page 505 the court said: "The power invoked is not "the power to tax to pay judgments, but the power to tax to "pay bonds, considered as distinct and independent, and "therefore, when the relator is obliged to go behind his

"judgments as money judgments merely to *obtain the remedy* "*pertaining to the bonds*, the court cannot decline to take "cognizance of the fact that the bonds are utterly void, and "that no such remedy exists.

"*Res judicata* may render straight that which is crooked, "and black that which is white, *facit ex curvo rectum, ex albo* "*nigrum* (*Jeter* v. *Hewitt*, 22 How., 352, 364): but where "application is made to collect judgments by process not "contained in themselves, and requiring, to be sustained, "reference to the alleged cause of action upon which they "are founded, the aid of the court should not be granted "when upon the face of the record it appears, not that "mere error supervened in the rendition of such judg-"ments, but that they rest upon no cause of action what-"ever."

This decision pertains exclusively to the remedy. The judgments previously rendered upon the coupons were not annulled. It was merely held that the judgments did not create an estoppel to deny the power to levy a tax to pay the coupons under the pecular facts of that case.

No such question can arise in this case; and even if it were involved, the statute under which these bonds were issued makes no provisions relative to the power to tax, and, under the statutes of Illinois, the bank would have a remedy which the decision in *Brownsville* v. *Loague* could not affect. It would be found that the case of *Harshman* v. *Knox County*, 122 U. S., 306, would be applicable to the situation when the bank shall seek its remedy upon its judgment, for in the pleadings in the equity cause and in this action the capacity of the county to contract the indebtedness was put in issue, and the decree and judgment would be conclusive.

Without further comments upon the case of *Brownsville* v. *Loague*, it is sufficient to say that no principle can be extracted from it which would authorize a court to hold that

the decree in equity upon which the defendant in error relies shall not have full force as a former adjudication of the validity of these bonds, because the court in which this action at law was tried, upon precisely the same evidence as was the foundation of the decree in equity, might have reached a different result in the absence of such decree.

Upon page 19 of argument for plaintiff in error it is suggested that "The German Savings Bank filed no cross-bill "in that (equity) case asking for affirmative relief, and in "the answer prays that the complainant's bill be dismissed "for want of equity, and the injunction dissolved. So that we "insist that the words 'That the said several bonds and "coupons thereof are valid,' etc., written in the decree dis- "missing complainant's bill for want of equity, can give no "additional effect to the order dismissing the bill."

That cause was not one in which a cross-bill could properly have been filed.

The issues presented by the bill filed by Franklin county related to the validity of certain bonds and coupons. The county alleged their invalidity; the bank by its answer in the cause, on page 77, transcript, "denies all the allegations "as to the unconstitutionality of any of said acts, or as to "the invalidity of said bonds." It was proper and necessary that the decree should settle that issue, and it did so by declaring that certain bonds and coupons thereof described in the bill (issued under act of 1849) "were issued without "authority of law, and are therefore void;" and as to the other class of bonds and coupons thereof, described in the bill (some of which coupons are the basis of this action) the decree declared them to be "valid and legal obligations "against the county of Franklin."

That is, the decree in terms settled the precise issue which the parties by their pleadings had presented to the court,

and if it added nothing in legal contemplation as an adjudication to the effect of the clause of the decree dismissing the bill for want of equity, it at least was an express declaration as to the meaning of that clause.

We respectfully submit that the judgment below should be affirmed.

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